

THE AMERICAN TRADITION OF LANGUAGE RIGHTS, ¿QUE VIVA TEXAS!: THE FORGOTTEN RIGHT TO GOVERNMENT IN A "KNOWN TONGUE"

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I have dedicated myself . . . to the burdensome work of preparing legitimate translations of [Mexican law] . . . because most of these inhabitants [of Texas] do not understand a word of Castilian and it is entirely impossible to govern a people with laws whose existence most of them ignore absolutely

-Stephen F. Austin¹

"[The Mexican government] hath sacrificed our welfare to the State of Coahuila, by which our interests have been continually depressed . . . *in an unknown tongue*"

-Texas Declaration of Independence²

"If English was good enough for Jesus Christ, it ought to be good enough for the children of Texas."

-Former Texas Governor Ma Ferguson³

1. Letter from Stephen F. Austin to José Antonio Navarro (Oct. 19, 1829) (translated by author from Spanish), in *THE AUSTIN PAPERS* (Eugene C. Barker, ed.), reprinted in *AMERICAN HISTORICAL ASS'N, II ANNUAL REPORT 272* (1922) [hereinafter *AUSTIN PAPERS*, 1828-1834].

2. *THE DECLARATION OF INDEPENDENCE OF THE REPUB. OF TEX.* (1836) (emphasis added), reprinted in 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822-1897*, at 1063 (Austin, Gammel Book Co. 1898).

3. Quoted in José A. Cárdenas, *An Educator's Rationale for Native-Language Instruction*, in *LANGUAGE LOYALTIES: A SOURCE BOOK ON THE OFFICIAL ENGLISH CONTROVERSY* 342, 349 (James Crawford ed., 1992) [hereinafter *CRAWFORD, LANGUAGE LOYALTIES*]. The quotation appears in numerous variations and has been described as "probably apocryphal." David Shribman, *Before Big Hair & Beauty Contests, Texas Women Got Their Nails Dirty*, *HOUS. CHRON.*, May 30, 1993, at 4; cf. Laurence McNamee & Kent Biffle, *A Few Words*, *DALLAS MORNING NEWS*, May 2, 1993, at J9 (describing the statement as "an unlikely quote" attributed to Ferguson and stating the quotation is "No more of those sinful languages in the public schools If the English language was good enough for Jesus, then it's good enough for Texans."). The quotation has been ascribed most often as a response by Governor Miriam (Ma) Wallace Ferguson, governor of Texas from 1924 to 1926, and again from 1932 to 1934, to an inquiry about whether she supported bilingual education. See Thomas F. Eagleton, *The Best and the Brightest*, *ST. LOUIS POST-DISPATCH*, July 22, 1988, at 3C (quoting Ferguson as stating, "If English was good enough for Jesus Christ, it's good enough for me."); William Safire, *On Language*, *N.Y. TIMES*, May 30, 1982, § 6, at 7 (Magazine Desk) (attributing the quotation as a response to a proposal to use Spanish as a second language in Texas schools and quoting her as stating, "Not while I am Governor! If English was good enough for Jesus Christ, it is good enough for Texas children."); Bob Tutt, *New Form of an Old Enemy*, *HOUS. CHRON.*, Dec. 11, 1993,

I. THE ENGLISH-ONLY MOVEMENT

Bilingual ballots.⁴

Bilingual education.⁵

Multilingual driver's license tests.⁶

The controversy surrounding these and other forms of governmental services offered in languages other than English was heightened in the 1980's,⁷ when "English-Only"⁸ organizations such as U.S. English⁹ and

at 35 (ascribing the quotation as Ferguson's defense of teaching only English in Texas schools and quoting her as stating "if the English language was good enough for Jesus Christ, it ought to be good enough for Texas school children [sic], too."). The quotation has also been described as a response to a question about supplying Spanish-language textbooks for Hispanic students. See Ronald Hire, Hous. Post, Nov. 22, 1990, at A50 (letter to the editor quoting Ferguson as stating, "If the English language was good enough for Jesus Christ, it's good enough for the school children of Texas."). Texas Governor Ann Richards has been quoted as ascribing the quotation as a response to a question about whether Governor Ferguson's two daughters understood Spanish. See Paul Harasim, *Candidate's Speech Delivers Naked Truth to Constituents*, Hous. Post, Feb. 17, 1988, at A3 (quoting Ferguson as stating, "If the English language was good enough for Jesus Christ, it's good enough for my children, too."). Governor Richards has also been quoted as ascribing the quotation to a query about whether children should be punished for speaking Spanish in public schools. See Vicki Haddock, *The Wit and Wisdom of Ann Richards*, S.F. EXAMINER, Jan. 27, 1991, at I15. For other variations on the quotation, see Michael Anthony, *Women of the West Are Celebrated in Singers' Fifth Season at Ordway*, STAR TRIB., Feb. 1, 1992, at 4E (quoting Ferguson as stating, "If the English language was good enough for Jesus Christ, it's good enough for the schoolchildren of Texas."); Steve Hoffman et al., *Outgoing NIH Chief Criticizes Clintons, Says She May Run for U.S. Senate Seat*, AKRON BEACON J., May 24, 1993, at C3 (quoting Ferguson as stating "[S]top learning our kids dirty rotten French and Spanish. If English was good enough for Jesus Christ, it's good enough for Texans."). A variation of the quotation has also been credited to H.L. Mencken. See Antonio J. Califa, *Declaring English the Official Language: Prejudice Spoken Here*, 24 HARV. C.R.-C.L.L. REV. 293, 293 (1989).

4. See, e.g., TEX. ELEC. CODE ANN. §§ 272.001-272.010 (Vernon 1996 & Supp. 1999) (requiring bilingual election materials).

5. See, e.g., TEX. EDUC. CODE ANN. §§ 29.051-29.064 (Vernon 1996) (authorizing bilingual education programs).

6. The Texas Department of Public Safety prints study manuals for the driver's license examination in nine languages. See Fred Bonavita, *English-Only Group Hits Democrats-Use of Spanish at Texas Rally Criticized*, Hous. Post, July 27, 1988, at E4.

7. See, e.g., *Native Texan Crusading to Make English State's Official Language*, Hous. Post, Dec. 11, 1988, at A31 [hereinafter *Native Texan*] (reporting opposition by English-Only proponent, Lou Zaeske, to bilingual driver's license manuals, voter registration forms, and instructions on unemployment benefits).

8. Those who seek to declare English the official language now prefer to use the term "Official English" to describe their efforts. I use the term "English-Only" instead, both because it is the term first used by proponents of declaring English the official language and because it more accurately describes the attempt to limit the use of other languages. See CRAWFORD, *LANGUAGE LOYALTIES*, *supra* note 3, at 7 (discussing controversy regarding terminology of movement to declare English the official language). Declaring English

English First¹⁰ began to advocate the establishment of English as the official language of the United States and to seek the abolition of governmental services in any language other than English.¹¹

These efforts have arisen because, to the surprise of many Americans,¹² nothing in the law of the United States makes English the official language.¹³ Nor do most states have any law declaring English as the state's

the official language could theoretically serve simply to recognize the language actually used in most governmental, educational, and commercial settings. Proponents of official English, however, clearly intend to make English the *only* language used in government. See, e.g., *Coalition Launches "Official English '88" Campaign*, UPI, Jan. 6, 1988, available in LEXIS, News Library, UPSTAT file (quoting American Ethnic Coalition chair Lou Zaeske as stating that "making English the official language of Texas . . . would eliminate bilingual education in Texas"). While the focus of the English-Only movement has been to prohibit multilingual governmental services, some supporters of the movement use official English declarations to attempt to prohibit the speaking of languages other than English in public. See, e.g., Marshall Ingwersen, *Citizens Enforce English-Only Laws: Public Misinterprets States' Statutes*, Hous. Post, Nov. 29, 1988, at A15 (reporting incidents in Florida including a phone operator's refusal to allow a collect call through when it was accepted in Spanish; refusal by department store clerk to accept a catalog order in Spanish; and suspension of supermarket cashier for speaking Spanish); Seth Mydans, *Pressure for English-Only Job Rules Stirring a Sharp Debate Across U.S.*, N.Y. TIMES, Aug. 8, 1990, at 12 (reporting that after passage of the Colorado Official English amendment a school bus driver ordered the children on the bus to speak only in English). The well-established Texas tradition of Spanish-language political campaigns in South Texas, where the population is overwhelmingly Hispanic, has been attacked as "not foster[ing] social cohesiveness" and "smack[ing] of favoritism and pandering." Ken Herman, *Campaign Only in English, Group Tells Candidates*, Hous. Post, Aug. 26, 1989, at A21 (reporting comments of American Ethnic Coalition chair Lou Zaeske); see also Bonavita, *supra* note 6 (reporting Zaeske's opposition to campaigning in Spanish by Governor Michael Dukakis and Senator Lloyd Bentsen); cf. Charles Reinken, *Some Official English Backers Hurt More than Help*, Hous. Post, Oct. 20, 1988, at E2 (supporting official English but noting that campaigning in other languages is "an entirely personal matter"). Those attacking election campaigns in other languages are unaware this Texas tradition was established by Anglo-American immigrants in the 1820's; they conducted election campaigns in English at a time when the language of government was Spanish. See *infra* text accompanying note 165.

9. U.S. English was founded in 1983 by the late Senator S.I. Hayakawa. See JAMES CRAWFORD, *HOLD YOUR TONGUE: BILINGUALISM & THE POLITICS OF ENGLISH ONLY* 3-4 (1992) [hereinafter CRAWFORD, *HOLD YOUR TONGUE*].

10. English First was founded in 1986. See *id.* at 168.

11. The development of this trend is described in Jamie B. Draper & Martha Jiménez, *A Chronology of the Official English Movement*, in CRAWFORD, *LANGUAGE LOYALTIES*, *supra* note 3, at 89-94.

12. See, e.g., J.B. Bricker, *Must Learn English*, Hous. Post, Nov. 8, 1989, at A22 (quoting a letter to the editor responding to the reported lack of bilingual school counselors by stating, "I thought English was the official language of the state.").

13. The late Senator S.I. Hayakawa introduced the first legislation to make English the official language of the United States in 1981. See CRAWFORD, *HOLD YOUR TONGUE*, *supra* note 9, at 3. All such proposals to date have been unsuccessful. Several "Official English" measures are pending in Congress. See H.R. 123, 103d Cong., 1st Sess. (1993)

official language. English is the official language of only seventeen states.¹⁴

(Language of Government Act of 1993); S. 426, 103d Cong., 1st Sess. (1993) (same); H.R. 739, 103d Cong., 1st Sess. (1993) (Declaration of Official Language Act of 1993); H.R.J. Res. 171, 103d Cong., 1st Sess. (1993) (proposing amendment to the United States Constitution making English the official language).

14. Ten states have enacted statutes making English the official language: Arkansas (ARK. CODE ANN. § 1-4-117 (Michie 1996) (enacted in 1987)); Illinois (ILL. COMP. STAT. ANN. 460/20 (West 1993) (adopted in 1923)); Indiana (IND. CODE ANN. § 1-2-10-1 (Michie 1993) (adopted in 1984)); Kentucky (KY. REV. STAT. ANN. § 2.013 (Michie 1992) (adopted in 1984)); Mississippi (MISS. CODE ANN. § 3-3-31 (1991) (adopted in 1987)); North Carolina (N.C. GEN. STAT. § 145-12 (1983) (adopted in 1987)); North Dakota (N.D. CENT. CODE § 54-02-13 (1989) (adopted in 1987)); South Carolina (S.C. CODE ANN. §§ 1-1-696 to 1-1-698 (Law. Co-op Supp. 1993) (adopted in 1987)); Tennessee (TENN. CODE ANN. § 4-1-404 (1991) (adopted in 1984)); and Virginia (VA. CODE ANN. § 22.1-212.1 (Michie 1993) (adopted in 1981)).

Six states have enacted constitutional amendments making English the official language: Alabama (ALA. CONST. amend. 509) (adopted in 1990); Arizona (ARIZ. CONST. art. XXVIII) (adopted in 1988); California (CAL. CONST. art. III, § 6) (adopted in 1986); Colorado (COLO. CONST. art. II, § 30a) (adopted in 1988); Florida (FLA. CONST. art. II, § 9) (adopted in 1988); and Nebraska (NEB. CONST. art. I, § 27) (adopted in 1920). Two of these amendments have been successfully challenged under the federal constitution. A Nebraska statute containing language similar to that portion of Nebraska's constitution requiring that "the common school branches shall be taught in [English] in public, private, denominational and parochial schools" was struck down in *Meyer v. Nebraska*, 262 U.S. 390 (1923). Arizona's amendment has been struck down as a violation of the First Amendment to the United States Constitution. See *Yñiguez v. Mofford*, 730 F. Supp. 309 (D. Ariz. 1990), *appeal docketed*, Nos. 90-15546 & 90-15581 (9th Cir.).

The Georgia Legislature has passed a nonbinding resolution declaring English to be the state language. 1986 Ga. Laws 70.

Three states recognize multiple languages. English and Hawaiian are the official languages of Hawaii. See *Haw. CONST. art. XV, § 4* (1985). Louisiana recognizes the "right of the people to preserve, foster and promote their respective historic linguistic and cultural origins." LA. CONST. art. 12, § 4 (1977). New Mexico's constitution required the ballots for the ratification of the constitution to be in both English and Spanish. See *N.M. CONST. art. XXII, § 14* (Michie 1992). Publication of all laws in English and Spanish was required for the first twenty years of statehood, and continues to be permitted. See *id.* at art. XX, § 12. Proposed amendments to the New Mexico Constitution must be published in both English and Spanish. See *id.* at art. XIX, § 1. The New Mexico legislature is required to provide for the training of teachers in English and Spanish. See *id.* at art. XII, § 8.

Spanish had been the second official language of Dade County, Florida since 1973. See CRAWFORD, *HOLD YOUR TONGUE*, *supra* note 9, at 93. In 1980, however, Dade County enacted "the nation's strictest English Only ordinance." *Id.* at 91. The ordinance has been repealed. See Carl T. Rowan, *Forked-Tongue Hypocrites Keep Trying*, HOUS. CHRON., May 22, 1993, at 10.

A. *The Mixed Record of Challenges Under Federal Law to English-Only Laws and Practices*

Attorneys representing individuals who speak languages other than English have responded to English-Only efforts by bringing claims under the United States Constitution and under federal law. The results have been mixed. The United States Supreme Court long ago struck down a Nebraska statute prohibiting schooling in any language other than English,¹⁵ and a federal district court in Arizona struck down the official English amendment to the Arizona Constitution.¹⁶ However, the United States Supreme Court has permitted prosecutors to strike jurors who are bilingual, even though this is often likely to result in the exclusion of most Hispanics and Asians.¹⁷ The United States Supreme Court has also refused to review a decision of the United States Court of Appeals for the Ninth Circuit that permits an employer to ban the speaking of languages other than English in the workplace.¹⁸

B. *The New Federalism and Language Rights: Unexplored Law*

The United States Constitution sets the floor for protections the states must provide, but the state constitutions can extend "protection to rights . . . which the Constitution of the United States does not give"¹⁹ The freedom of the state courts to determine the meaning of state law

15. See *Meyer v. Nebraska*, 262 U.S. 390 (1923). A summary of criticism of the opinion in *Meyer* can be found in PHILIP BOBBITT, *CONSTITUTIONAL FATE: THEORY OF THE CONSTITUTION* 71, 98-99 (1982) [hereinafter BOBBITT, *CONSTITUTIONAL FATE*].

16. See *Yñiguez v. Mofford*, 730 F. Supp. 309 (D. Ariz. 1990), *appeal docketed*, Nos. 90-15546 & 90-15581 (9th Cir. Jul. 19, 1991).

17. See *Hernández v. New York*, 500 U.S. 352 (1991). *Hernández* has been widely criticized. See, e.g., Miguel A. Méndez, *Hernández: The Wrong Message at the Wrong Time*, 4 STAN. L. & POL'Y REV. 193 (1992-93); Juan F. Perea, *Hernández v. New York: Courts, Prosecutors, and the Fear of Spanish*, 21 HOFSTRA L. REV. 1 (1992); Deborah A. Ramírez, *Excluded Voices: The Disenfranchisement of Ethnic Groups from Jury Service*, 1993 WIS. L. REV. 761; Sarah B. Clasby, Note, *Understanding Testimony: Official Translation & Bilingual Jurors in Hernández v. New York*, 23 U. MIAMI INTER-AM. L. REV. 515 (1991-92).

18. See *García v. Spun Steak Co.*, 998 F.2d 1480 (9th Cir. 1993), *cert. denied*, 114 S. Ct. 2726 (1994).

19. *Ex parte Tucci*, 859 S.W.2d 1, 13 (Tex. 1993) (stating U.S. Constitution provides a floor for liberties); *Davenport v. García*, 834 S.W.2d 4, 15 (Tex. 1992) (stating that the "only limit on states is that they may not deny the minimum level of protection mandated by the Federal Constitution"); *LeCroy v. Hanlon*, 713 S.W.2d 335, 338 (Tex. 1986) (noting that "state constitutions can and often do provide additional rights for their citizens" and that the Texas Supreme Court "has been in the mainstream of this movement"); *Whitworth v. Bynum*, 699 S.W.2d 194, 196 (Tex. 1985) (noting that states are free to set their own standards so long as these standards do "not fall below the minimum standards" of the United States Constitution); *Mellinger v. City of Houston*, 68 Tex. 37, 43, 3 S.W. 249, 252

is a well-established principle of American federalism.²⁰ Lawyers who perceive the federal courts as less protective of individual rights than in the past are turning increasingly to the state constitutions.²¹ After years of neglect, academics are beginning to respond to calls for examinations of the protections offered by state constitutions,²² often using the rubric of the "new federalism."²³ While academics and others have responded to this call, particularly with respect to criminal law issues²⁴ and free speech issues,²⁵ analyses of language rights have focused almost entirely

(1887) (noting that the Texas Constitution protects rights "which the Constitution of the United States does not give in terms"); *Shelton v. Marshall*, 16 Tex. 344, 352 (1856) (holding "it to be clear and indisputable, that every State has the right to decide, all questions of its own local, internal policy, and to declare the meaning and effect of its own constitution"); *Del Valle Indep. Sch. Dist. v. López*, 863 S.W.2d 507, 514 (Tex. App.-Austin 1993) (recognizing that the Texas Constitution "protects additional liberties guaranteed to all citizens of Texas"); *State v. Morales*, 826 S.W.2d 201, 204 (Tex. App.-Austin 1992) (stating that "Texas courts have relied on the Texas Constitution to find more expansive rights").

20. See generally CHARLES ALAN WRIGHT, *LAW OF FEDERAL COURTS* 788-90 (5th ed. 1994) (describing the history of the inability of the United States Supreme Court to review the interpretation by state courts of state law). See, e.g., *Murdock v. City of Memphis*, 87 U.S. (20 Wall.) 590, 626 (1874) (noting that "[t]he State courts are the appropriate tribunals, as this court has repeatedly held, for the decision of questions arising under their local law, whether statutory or otherwise").

21. See, e.g., William J. Brennan, Jr., *The Bill of Rights & the States: The Revival of State Constitutions as Guardians of Individual Rights*, 61 N.Y.U. L. REV. 535 (1986) (hailing the development of state constitutional law in view of the retrenchment of federal protection by the United States Supreme Court).

22. The Texas Supreme Court has noted that "legal academia may have 'unwittingly' contributed to the failure of counsel to assist in developing state constitutional law by 'sometimes viewing [state constitutional issues] as the 'bush league of constitutional law.'" *Davenport*, 834 S.W.2d at 21 n.58 (quoting Hans A. Linde, *Does the "New Federalism" Have a Future?*, 4 EMERGING ISSUES IN ST. CONST. L. 251 (1991)); see also Robert F. Williams, *Equality Guarantees in State Constitutional Law*, 63 TEX. L. REV. 1195, 1223 (1985) (arguing that "academics should direct some of their attention to state constitutional law").

23. Professor Donald E. Wilkes claims credit for the first use of this phrase in Donald E. Wilkes, *The New Federalism in Criminal Procedure: State Court Evasion of the Burger Court*, 62 Ky. L.J. 421 (1974). See George E. Dix, *Judicial Independence in Defining Criminal Defendants' Texas Constitutional Rights*, 68 TEX. L. REV., 1369, n.2 (1990).

24. Examples with respect to the Texas Constitution include Dix, *supra* note 23; Cathleen C. Herasimchuk, *The New Federalism: Judicial Legislation by the Texas Court of Criminal Appeals?*, 68 TEX. L. REV. 1481 (1990); Matthew W. Paul & Jeffrey L. Van Horn, *Heitman v. State: The Question Left Unanswered*, 23 ST. MARY'S L.J. 929 (1992).

25. Analyses of the Texas Constitution include James C. Harrington, *Free Speech, Press, & Assembly Liberties Under the Texas Bill of Rights*, 68 TEX. L. REV. 1435 (1990); Joseph H. Hart, *Free Speech on Private Property-When Fundamental Rights Collide*, 68 TEX. L. REV. 1469 (1990).

on federal law.²⁶ Given the mixed record of the federal courts with respect to language rights, it is therefore appropriate to examine whether any additional protection may be available under state constitutions for individuals who speak languages other than English. This Article uses the Texas Constitution to begin the examination of language rights under the state constitutions.

C. *The Texas Constitution As an Appropriate Starting Point for the Examination of Language Rights Under State Constitutions*

Texas is an appropriate starting point for such an examination. Innumerable Hollywood westerns have given Texas a quintessentially American image in the United States and abroad.²⁷ The image of Texans has varied over the years, but whether the image was of a cowboy with a ten-gallon hat, or of a *nouveau riche* oil millionaire, Texans have traditionally been viewed as self-reliant, independent, English-speaking Anglo-Americans.

These images, of course, never comported with reality. With respect to language, they are especially inaccurate. As I demonstrate below, Texas has long been home to the speakers of many languages. Often overlooked is the fact that the first English-speaking Texans were immigrants to a Spanish-speaking country: Mexico. Few of these Anglo-American immigrants spoke Spanish, the language of the Mexican government. Texas thus provides a unique opportunity to examine the response of English-speaking Anglo-Americans who voluntarily immigrated to a country whose national language they did not speak. I argue in this Article that these English-speaking Anglo-American immigrants asserted a fundamental right of access to governmental services in a "known tongue." The assertion of this right is of great importance to today's Texans who do not speak the national language—English. It is also of importance, however, for residents of other states who do not speak English; for the history of Texas in the nineteenth century gives us a window into

26. See, e.g., Califa, *supra* note 3, at 330-46; Laura A. Cordero, *Constitutional Limitations on Official English Declarations*, 20 N.M. L. REV. 17, 25-52 (1990); Michael M. Pacheco, *Does My Spanish Bother You?: Language Based Discrimination as a Pretext for National Origin Discrimination*, 11 CHICANO-LATINO L. REV. 53 (1991); Juan F. Perea, *Demography & Distrust: An Essay on American Languages, Cultural Pluralism, and Official English*, 77 MINN. L. REV. 269, 356-371 (1992); Hiram Puig-Lugo, *Freedom to Speak One Language: Free Speech and the English Language Amendment*, 11 CHICANO-LATINO L. REV. 35 (1991); Leo Jonathan Ramos, Comment, *English First Legislation: Potential National Origin Discrimination*, 11 CHICANO-LATINO L. REV. 77 (1991).

27. See Terry G. Jordan, *A Century and a Half of Ethnic Change in Texas, 1836-1986*, 89 SW. HIST. Q. 385, 385 (1986) (noting that the "myth of the typical Texan [is] a chauvinistic notion that, on occasion, has even penetrated the scholarly community").

how English-speaking Americans viewed language during this early period of American history. Courts that refuse to extend language rights to those who do not speak English today fail to recognize a fundamental right asserted by English-speaking Anglo-Americans who immigrated to Mexican Texas. These nineteenth-century Anglo-Americans, widely recognized in American lore as freedom fighters at the Battle of the Alamo, believed their fundamental freedoms included the freedom to speak and use their own language.

I argue in this Article that these framers of the Texas Bill of Rights experienced the problems created whenever immigrants do not speak the national language. Their response to these problems—their assertion of a fundamental right of access to governmental services in a “known tongue”—should be considered as Texas and other states confront the problems created by residents who do not speak English. Texas continues to struggle with the problems raised by the Anglo-American immigrants of the 1820’s and 1830’s, since many citizens and residents of Texas speak other languages. One in four Texans speaks a language other than English at home.²⁸ Texas has the third-highest rate among all the states of residents who speak a language other than English.²⁹ Texans speak 169 languages other than English.³⁰ While most Texans who speak a language other than English at home speak Spanish,³¹ the number of speakers of Asian languages is growing at the fastest rate.³²

The perceived threat to the English language in Texas presented by this demographic diversity has driven an English-Only group based in Bryan, Texas, the American Ethnic Coalition, to spearhead efforts to establish English as the official language of Texas.³³ Legislation to make English the official language of Texas was introduced by Democratic state representative L. E. (Pete) Patterson in 1987, but quickly died after the Mexican American Legislative Caucus corralled enough votes to block it

28. See *Voices of America: Report Says that More U.S. Residents Speaking a Foreign Language at Home*, DALLAS MORNING NEWS, Apr. 28, 1993, at A1 [hereinafter *Voices of America*] (indicating an increase from one in five in 1980).

29. See Felicity Barringer, *For 32 Million Americans, English is a 2d Language*, N.Y. TIMES, Apr. 28, 1993, at A18 (reporting New Mexico is first with 33.5% of its population speaking another language, California is second with 31.5%, and Texas is third with 25.4%).

30. See *Voices of America*, *supra* note 28.

31. Spanish is spoken by 3.4 million Texans, or 87% of all Texans who speak a language other than English. See Stefanie Asin, *Census Says It All; Non-English Speakers Are Gaining Here*, HOUS. CHRON., Apr. 28, 1993, at 1.

32. The number of Vietnamese speakers in Texas rose from 23,100 in 1980 to 57,700 in 1990; Chinese speakers increased from 21,700 to 48,000; Korean speakers grew from 11,300 to 26,000. See *Voices of America*, *supra* note 28.

33. See *Native Texan*, *supra* note 7.

under the rules of the Texas Legislature.³⁴ Similar proposals in 1988 were also stillborn.³⁵

In opposing the English-Only bills, legislators representing districts with large Tejano³⁶ populations were carrying out the desires of their constituents. Most Hispanics in the United States oppose declaring English as the official language.³⁷ Unlike many Anglo English-Only proponents, the minority of Hispanics who support declaring English as the official

34. See Tex. H.R.J. Res. 55, 70th Leg., R.S. (1987) (proposing a constitutional amendment to establish English as the official language of Texas). *But see* Tex. H.R. Con. Res. 61, 70th Leg., R.S. (1987) (expressing opposition to efforts to designate English as the official state language). "[G]roups as divergent as the Baptist Christian Life Commission and the Texas Civil Liberties Union opposed" the official English proposal at a legislative hearing in Apr., 1987. Bob Lowry, *English Supporters Seek Place on Special Session Agenda*, UPI, July 6, 1987, available in LEXIS, News Library, UPSTAT File.

35. See Tex. H.B. 2467, 71st Leg., R.S. (1989) (providing for non-binding referendum on the establishment of English as the official language for the conduct of government business); Tex. H.R.J. Res. 48, 71st Leg., R.S. (1989) (proposing constitutional amendment to establish English as the official language of Texas). See also Ken Herman, *Senators May Kill English Bill-13 Legislators Sign Hobby Letter*, Hous. Post, Nov. 23, 1988, at A4 (reporting 13 senators agreed to block any official English proposal when only 11 votes were needed to do so).

36. I use the term Tejano in this Article to denote any persons of Mexican ancestry, resident of Texas, whether born in Mexico, the Republic of Texas, or the United States. See ARNOLDO DE LEÓN, *THEY CALLED THEM GREASERS: ANGLO ATTITUDES TOWARD MEXICANS IN TEXAS 1821-1900* xiii (1983) (adopting this definition of "Tejano").

37. The so-called "Christian Coalition" has claimed that Hispanics support making English the nation's official language. See John Gravois, *Robertson Group Says Blacks, Hispanics More Aligned with It*, Hous. Post, Sept. 10, 1993, at A8 (reporting poll showing 62.8% of Hispanics support English as the official language). However, every other pollster surveying Hispanics has found a majority of Hispanics oppose declaring English the official language. See, e.g., William E. Clayton, Jr., *Survey Results Offer Surprises; Most Hispanics Say U.S. Getting Too Many Immigrants*, Hous. Chron., Dec. 16, 1992, at A1 (reporting that Latino National Political Survey shows 44.4% of Mexican Americans, 48.9% of Puerto Ricans, and 40% of Cuban Americans felt English should be the official language); Rodolfo de la Garza, *DALLAS MORNING NEWS*, Jan. 10, 1993, at 1J (noting that the "Latino National Political Survey, the most extensive and detailed study of Hispanic attitudes, values and behavior ever conducted," found that, "Mexican and Cuban noncitizens overwhelmingly disagree that English should be the official language," and a majority of Hispanic United States citizens reject the concept as well); Allan C. Kimball, *Bryan Businessman Pushes Official Language Referendum Issue Becomes All-Consuming Passion*, Hous. Post, Feb. 28, 1988, at A12 (reporting poll by Public Policy Research Laboratory at Texas A&M University showing fewer than 40% of all Hispanics support making English the official language, while 74% of all Texans favor such a proposal); *Polled Hispanics Support Taxes for Improving Schools*, Hous. Post, Apr. 7, 1990, at A26 (reporting poll by Southwest Voter Research Institute finding only 31% of Hispanic Democrats and 28% of Hispanic Republicans want a state law making English the official language); *Texans Support English-Only Bill, Poll Shows*, UPI, May 13, 1987, available in LEXIS, News Library, UPSTAT File (noting that three-fourths of Texans polled by Public Policy Resources Laboratory at Texas A&M University supported legislation to make English the

language often support the provision of some bilingual governmental services.³⁸

While most Tejanos oppose English-Only efforts, the popularity of such a measure among largely Anglo voters was evident in 1988, when 92% of the voters voting in the Republican Primary approved a nonbinding referendum in favor of designating English as the official language of Texas.³⁹ The Texas Republican Party platform of 1988 contained an English-Only plank, despite the opposition of Hispanic Republicans⁴⁰ and of the Republican leadership.⁴¹

Encouraged by the popularity of English-Only proposals among many Texans, English-Only proponents have vowed to continue their efforts to

state's official language, but finding "the strongest objections coming from Mexican American respondents").

38. See Clayton, *supra* note 37 (noting Hispanics in Latino National Political Survey "supported bilingual education so strongly they would be willing to pay higher taxes to finance it").

39. See David Barron, *Voters Back 'Official' English, Elected Judges*, UPI, Mar. 9, 1988, available in LEXIS, News Library, UPSTAT File (stating that, with 75% of precincts reporting, 92.5% of voters in Republican primary approved proposal to declare English the official language).

40. See *GOP Committee Votes to Put "English Only" Resolution on Ballot*, UPI, Nov. 21, 1987, available in LEXIS, News Library, UPSTAT File (reporting opposition of Texas Republican Executive Committee member H. "Pulse" Martínez to placing Official English resolution on the Mar., 1988 primary ballot); *Resolution on English a GOP Issue, Hispanics Want It Kept Off Platform*, Hous. Post, Aug. 7, 1988, at 23A (reporting opposition to plank by Hispanic Republican leaders); Felton West, *Hispanics Will Support Bush, Clements Says*, Hous. Post, Aug. 17, 1988, at 13A.

41. The leadership of the Republican Party opposed declaring English the official language of Texas because of perceptions that it offends Hispanics. See Major Garrett, *GOP's Williams Backs Bilingual Education*, Hous. Post, Nov. 14, 1989, at A23 (reporting opposition of English-only plank by gubernatorial candidate Clayton Williams); John Gravois, *GOP Candidates Split Over Official English - Hance Lone Hopeful to Back Controversial Language Question*, Hous. Post, Nov. 4, 1989, at A22 (reporting opposition of Republican gubernatorial candidates Clayton Williams, Tom Luce, and Jack Rains; also reporting opposition of President George Bush, Governor Bill Clements, and Senator Phil Gramm, but noting support of gubernatorial candidate Kent Hance). Cf. Joe Patrick Bean, *Is the Official English Plan Worthy? No - Lincoln Would Have Hated It*, Hous. Post, Feb. 12, 1988, at 3E (recounting opposition of President Abraham Lincoln and other Republican Party founders to nativism, and drawing parallels with the English-Only movement); Jeri Clausen, *Official English Leader Says Candidates Should Use English Only*, UPI, Aug. 25, 1989, available in LEXIS, News Library, UPSTAT File (stating that gubernatorial candidate Kent Hance supports the Official English movement, but also supports bilingual education); Raúl Reyes & John Gravois, *Robertson Draws Raves as He Blasts "Mediocre" Dukakis*, Hous. Post, June 12, 1988, at A14 (reporting opposition of President Bush to English-only plank in Republican platform and his support for bilingual education); Jim Simmon, *No "English Only," Texas Democrats OK 1988 State Platform*, Hous. Post, June 19, 1988, at 15A (explaining that the Texas Democratic Party platform of 1988 opposed an official English declaration as "counterproductive").

abolish the use of any language other than English in the provision of any governmental service.⁴² This threat to the multilingual services provided to the more than 3 million Texans who speak a language other than English makes Texas a natural choice to begin the examination of language rights under the state constitutions.

The mandate of the Texas Supreme Court directing the Texas courts to consider claims under the Texas Constitution first, instead of immediately ruling on a federal constitutional claim,⁴³ underscores the need for such an endeavor. Whether viewed from a current political perspective as "conservative" or as "liberal,"⁴⁴ the Texas Constitution must be interpreted in light of the experiences of Texans:

42. See *Native Texan*, *supra* note 7 (reporting that English-Only proponent Lou Zaeske "says he will not rest until his native state of Texas recognizes English as its official language"). Cf. *Independent to Campaign for Senate*, DALLAS MORNING NEWS, Jan. 20, 1993, at D12 (reporting Zaeske defended English-only efforts, but did not intend to make it a top issue in his independent campaign for the United States Senate); R. G. Ratcliffe, *Candidates Appeal to Perot Backers: 20 Seeking U.S. Senate Seat Attend Forum*, HOUS. CHRON., Mar. 30, 1993 at A9 (reporting that Zaeske was "booed by many in the audience when he said English should be made the official language of the United States").

43. See *Davenport v. Garcia*, 834 S.W.2d 4, 18 (Tex. 1992) (stating that the soundest way to avoid the delay caused by unnecessary appeals to the United States Supreme Court is to "rely on the state constitution in the first instance").

44. While the recent emphasis on the state constitutions has been fueled by those seeking to escape the conservatism of the federal judiciary, the freedom of the state courts to interpret their state constitutions independently does not mean the state constitution always will provide broader protections than the United States Constitution - a point often overlooked by proponents and critics of the "new federalism." *Ex parte Tucci*, 859 S.W.2d 1, 13 (Tex. 1993) (noting that a state court may interpret its "fundamental law as affording less protection than our federal charter"); *id.* at 32 n.34 (Phillips, C.J., concurring) (stating that the protection of a state constitution "may be greater, lesser, or the same as that provided by a different provision in the United States Constitution"). Many conservatives have opposed the independent analysis of state constitutions. Cf. Peter Linzer, *Why Bother With State Bills of Rights?*, 68 TEX. L. REV. 1573, 1574 (1990) (arguing, "that it took Warren Burger and William Rehnquist to lead us to rediscover our state bills of rights is no reason to abandon our new world"). Moreover, "state bills of rights are two-edged swords that can be used aggressively by political conservatives as well as by liberals." *Id.* at 1576; Stanley Mosk, *State Constitutionalism: Both Liberal & Conservative*, 63 TEX. L. REV. 1031 (1985) (arguing state constitutionalism offers liberals the prospect of continued expansion of individual rights and liberties, while offering conservatives the triumph of federalism). The opposition of "conservatives" to the independent analysis of state constitutions is ironic since many conservatives have ardently championed federalism to oppose "liberal" federal projects. See, e.g. M. P. Duncan, III, *Terminating the Guardianship: A New Role for State Courts*, 19 ST. MARY'S L.J. 809, 821 (1988) (noting the "chagrin of many conservative theorists" at state court interpretations "more oriented toward individual rights and liberties than was anticipated"); Linzer, *supra*, at 1574 (recognizing that "[m]any critics see this new federalism as nothing more than a tactic of liberal activists to avoid the increasing conservatism of Republican-dominated federal courts."); Paul & Van Horn, *supra* note 24, at 929, 967 (containing arguments by two assistant state prosecuting attorneys as to why

Our Texas forbears surely never contemplated that the fundamental state charter, crafted after years of rugged experience on the frontier and molded after reflection on the constitutions of other states, would itself veer in meaning each time the United States Supreme Court issued a new decision. After all, the Texas historical experience was different from that of the eastern seaboard.⁴⁵

Because Texas' historical development is significantly different from that of the eastern United States, the analysis of the provisions of the Texas Constitution must reflect that diversity.⁴⁶ The Texas courts "recognized the importance of our state constitution long before 'new federalism' even had a name."⁴⁷

The Texas Constitution, interpreted in light of the history and legal tradition of Texas which officially sanctions multilingualism in the provision of governmental services, provides strong protection against language discrimination.⁴⁸ As large numbers of Anglo-American immigrants arrived

current conservative interpretations of the United States Constitution should be followed in interpreting the Texas Constitution).

45. JAMES C. HARRINGTON, *THE TEXAS BILL OF RIGHTS: A COMMENTARY & LITIGATION MANUAL* 41 (1987) [hereinafter HARRINGTON, *TEXAS BILL OF RIGHTS*], *quoted in Ex parte Tucci*, 859 S.W.2d 32 n.34 (Phillips, C. J., concurring) and *Davenport v. Garcia*, 834 S.W.2d at 16 (same). See also Ted M. Benn, Comment, *Individual Rights & State Constitutional Interpretations: Putting First Things First*, 37 BAYLOR L. REV. 493, 508 (1985) (suggesting that "pre-existing state law, matters of particular state interest, state traditions and distinctive attitudes of a state's citizenry" be used to analyze a state constitution, citing *State v. Hunt*, 450 A.2d 952, 965-66 (1982) (Handler, J., concurring); Judith Hession, Comment, *Rediscovering State Constitutions for Individual Rights Protection*, 37 BAYLOR L. REV. 463, 470 (1985) (noting that, "Each constitution is different, and . . . the history behind every written or omitted word shape[s] the law of each state.")).

46. HARRINGTON, *TEXAS BILL OF RIGHTS*, *supra* note 45, at 45; cf. *Brown v. State*, 657 S.W.2d 797, 806-07 (Tex. Crim. App. 1983) (Clinton, J., joined by Onion, P.J., & Miller, J., concurring) (stating that "[m]erely to parrot opinions of the Supreme Court of the United States interpreting the Fourth Amendment is to denigrate the special importance our Texan forbearers attached to their . . . guarantees vouchsafed by the Bill of Rights they first declared and then insisted on retaining in every successive constitution . . ."). *Id.* at 810 (Teague, J., dissenting) (describing the plurality's holding that Article I, Section 9 of the Texas Constitution must be interpreted in harmony with United States Supreme Court opinions interpreting the Fourth Amendment to the United States Constitution as an "implicit holding" that the Texas Court of Criminal Appeals now has "the role of being nothing more than mimicking court jesters of the Supreme Court of the United States"). The Texas Court of Criminal Appeals subsequently overruled *Brown* holding that Article I, Section 9 is to be construed in accordance with Fourth Amendment law. See *Heitman v. State*, 815 S.W.2d 681, 690 (Tex. Crim. App. 1991) (en banc).

47. *Davenport*, 834 S.W.2d at 13.

48. Cf. Arvel (Rod) Ponton, III, *Sources of Liberty in the Texas Bill of Rights*, 20 ST. MARY'S L.J. 93, 94 (1988) (noting that the Texas Bill of Rights "developed from a unique combination of historical, economic and philosophical forces, which included . . . the bicultural nature of Texas . . .").

in the 1820's and 1830's, the government of the Mexican state of Coahuila and Texas responded by adding English as a language of government for most purposes.⁴⁹ The failure of the Mexican government to be even more responsive to the Texians'⁵⁰ concerns about government in an "unknown tongue" was one of the reasons given by the Texians for declaring independence from Mexico. After Texas declared its independence from Mexico, English became the dominant language of government, but the Republic of Texas recognized the need to provide government services in Spanish to the native Tejano citizens.⁵¹

This Article sets forth abundant evidence that English-Only proponents are wrong when they question the authority of state officials to offer multilingual governmental services;⁵² the Texas Constitution has always sanctioned the offering of governmental services in languages other than English. English-Only proponents are wrong when they complain about bilingual ballots and bilingual education as recent imports to Texas imposed by federal government mandates;⁵³ they are as Texan as *fajitas*⁵⁴ and the *rodeo*.⁵⁵ English-Only proponents are wrong when they characterize bilingual ballots, bilingual education, and other bilingual governmental services as inventions of modern government created to coddle Tejanos who purportedly refuse to learn English;⁵⁶ they were established in Texas in the 1820's and 1830's at the insistence of English-speaking Anglo-American immigrants who claimed a right to communicate with the Spanish-speaking Mexican government in their own lan-

49. See *infra* part IV.

50. I use the term "Texian" to refer to Anglo-American immigrants who resided in Texas during the Mexican and Republic of Texas eras. See DE LEÓN, *supra* note 36, at xiii (describing "Texian" as a "term of self-reference used by Anglos during the early years of residence in Texas").

51. See *infra* part VI.

52. See 23 *Legislators Will Just Say 'Si' to English, Group's Founder Says*, Hous. Post, Nov. 13, 1988, at A18 (reporting English-Only proponent Lou Zaeske would ask the Texas Attorney General to issue an opinion on the constitutionality of the state's "engaging in bilingual operation").

53. See 42 U.S.C. § 1973b(f)(3) (1994) (prohibiting English-only elections where more than 5% of the citizens of voting age are members of a single language minority); *United States v. Texas*, 506 F. Supp. 405 (E.D. Tex. 1981) (ordering the provision of bilingual education to all Mexican American students in Texas to remedy violations of federal law), *rev'd on other grounds*, 680 F.2d 356 (5th Cir. 1982).

54. Beef skirt steaks in English.

55. In English, a gathering of cowboys who engage in contests requiring the use of cattle-driving skills.

56. See, e.g., Guy Wright, *U.S. English*, in CRAWFORD, *LANGUAGE LOYALTIES*, *supra* note 3, at 128 (accusing "leaders of ethnic blocs, mostly Hispanic of demand[ing] government funding to maintain their ethnic institutions."). See also *infra* text accompanying notes 496-99 (discussing the falsity of the claim of English-Only proponents that Hispanics refuse to learn English).

guage. Those who advocate making English the official language of Texas and seek to prohibit governmental services in any language other than English invoke the mythology of the English-speaking Texan⁵⁷ rather than the historical reality of multilingual Texans.⁵⁸ Regardless of the protections the United States Supreme Court and the United States Congress may deem to make available to non-English speakers, the Texas Constitution should, consistent with the intent of the framers of the Republic of Texas, ensure that state and local government does not communicate with non-English speakers in an "unknown tongue."

I begin in Part II of this Article by discussing the use of historical argument in constitutional interpretation, and its use by the Texas courts in interpreting the Texas Constitution. I then review the history of the role of language in government in Texas. In Part III, I examine the role of language in the Texas government when it was a province of the Spanish Empire. Part IV examines language in Texas government under Mexican law and practice, and describes how Mexico responded to the needs created by the sudden influx of large numbers of English-speaking immigrants. In Part V, I review the role of language in the efforts of these immigrants, the Texans, and of the native Tejanos to secure independence from Mexico. Part VI describes the use of Spanish in governmental activities during the Republic of Texas era.⁵⁹ I conclude in Part VII that the increase in multilingual governmental services in the modern era carries out the intent of the framers of the Texas Bill of Rights to provide Texans with access to government in a "known tongue." I also assert that the Texas courts should reject any future efforts to limit multilingual governmental services as a violation of the right to government in a "known tongue," and suggest that the experience of the English-speaking Anglo-American immigrants in Texas be considered as courts in other states decide language rights issues brought by residents who do not speak English.⁶⁰

57. See *supra* note 27 and accompanying text.

58. As one writer has noted, "Those who would understand Texas, now as well as 150 years ago, must once and for all discard the myth of the typical Texan, . . . and accept the concept of a multiethnic society." Jordan, *supra* note 27, at 385.

59. See *Shepherd v. San Jacinto Junior College District*, 363 S.W.2d 742, 744 (Tex. 1963) (holding that constitutional issues may be decided "by placing the constitutional provisions, the decisions of this Court and the pertinent legislative actions in their proper chronological order").

60. Professor Peter Linzer has identified the "potential conflict between the academic, who must look honestly at contrary arguments, and the advocate, who must seduce courts without hesitating or temporizing." Linzer, *supra* note 44, at 1573 n*. As an attorney with the Mexican American Legal Defense and Educational Fund (MALDEF), I litigated many cases alleging language discrimination and advocated for language rights. That experience gave me a thorough grounding in the issues and has aided my teaching and my scholarship.

II. INTERPRETING THE TEXAS CONSTITUTION

A. *The Use of Historical Argument in Constitutional Interpretation*

This Article applies what Professor Phillip Bobbitt has called the historical argument of constitutional interpretation:

Historical argument is argument that marshals the intent of the draftsmen of the Constitution and the people who adopted the Constitution. Such arguments begin with assertions about the controversies, the attitudes, and decisions of the period during which the particular constitutional provision to be construed was proposed and ratified.⁶¹

Judge Bork also explained historical argument at the confirmation hearings on his nomination to the United States Supreme Court:

[Y]ou look at the founders and the ratifiers . . . *what it was that was troubling them at the time*, why they did this . . . to get what the public understanding of the time was, *of what the evil was they wished to avert, what the freedom was they wished to protect*. And once you have that, that is your major premise; and then the judge has to supply the minor premise to make sure to ask whether that value, that freedom, is being threatened by some new development in the law or in society or in technology today. And then he makes the old freedom effective today in the new circumstances.⁶²

Historical argument has been the subject of intensive scholarly examination and criticism.⁶³ It is especially problematic as a method of consti-

Nonetheless, Professor Linzer correctly notes that, "An honest professor who is also an honest advocate . . . has a hard row to hoe." *Id.* I join Professor Linzer in attempting to hoe that hard row.

61. BOBBITT, *CONSTITUTIONAL FATE*, *supra* note 15, at 7 (footnote omitted). This form of constitutional analysis is known by various names: see "original understanding," ROBERT H. BORK, *THE TEMPTING OF AMERICA: THE POLITICAL SEDUCTION OF THE LAW* 6 (1990) [hereinafter BORK, *THE TEMPTING OF AMERICA*]; "originalism," Paul Brest, *The Misconceived Quest for the Original Understanding*, 60 B.U. L. REV. 204 (1980); "interpretivism," Earl M. Maltz, *The Dark Side of State Court Activism*, 63 TEX. L. REV. 995, 995-96 (1985) (defining interpretivist courts as those that "seek primarily to divine and implement the intent of the framers of their state constitutions"); "original intent," Jefferson Powell, *The Original Understanding of Original Intent*, 98 HARV. L. REV. 885 (1985).

62. PHILIP BOBBITT, *CONSTITUTIONAL INTERPRETATION* 90-91 (1991) (*quoting* Judge Bork's testimony before the Senate in 1987) (emphasis added).

63. Cf. BOBBITT, *CONSTITUTIONAL INTERPRETATION*, *supra* note 62, at 95 (arguing that Judge Bork is not a true originalist but rather a prudentialist). See, e.g., BOBBITT, *CONSTITUTIONAL INTERPRETATION*, *supra* note 62, at 161 (arguing that "algorithm" "such as historical method" "that some critics are searching for, and others would impose, is not only not necessary to decision and to justice but is inimical to the legitimacy and justification of constitutional review in America"); *id.* at 184 (arguing that the American constitu-

tutional analysis for women and people of color, for the framers of the Texas Constitution, like the framers of constitutions elsewhere, used the legal system they created to keep women and people of color in a subordinate position.⁶⁴ However, historical argument is not the only method of deciding constitutional issues,⁶⁵ and I do not suggest that historical argument is always the most appropriate form of constitutional analysis in any particular case.⁶⁶ Nor does the use of historical argument

tional system requires a recursion to conscience which is sought to be dispensed with whenever a particular decision process such as the historical method is insisted upon); BOBBITT, *CONSTITUTIONAL FATE*, *supra* note 15, at 9-24 (discussing historical argument); BORK, *THE TEMPTING OF AMERICA*, *supra* note 61, at 143-60 (advocating "original understanding"); *id.* at 161-85 (discussing objections to "original understanding" and asserting that none of the objections are valid); Brest, *supra* note 61, at 204 (criticizing "originalism" as a method of constitutional interpretation); Richard S. Kay, *Adherence to the Original Intentions in Constitutional Adjudication: Three Objections and Responses*, 82 Nw. U. L. Rev. 226 (1988) (discussing criticisms of original intent). Professor Jefferson Powell has argued that the framers of the United States Constitution did not intend for the courts to use original intent to interpret that document. See Powell, *The Original Understanding of Original Intent*, *supra* note 61, at 885.

64. See, e.g., *Terrell v. Middleton*, 187 S.W. 367, 371 (Tex. Civ. App.-San Antonio 1916, no writ) (recounting that the events leading up to the 1875 Constitutional Convention included "the disfranchisement of the whites and the enfranchisement of the negroes [sic]" and that in 1873 "the burdens had reached their limit, when an armed constabulary of former slaves surrounded the polls and sought to intimidate the whites . . ."); Williams, *supra* note 22, at 1205 (noting that "one must question the [state constitutions'] drafters' commitment to equality, since slavery and formal inequality in political participation were allowed to continue").

65. Professor Bobbitt describes six modalities of constitutional interpretation:

[T]he historical (relying on the intentions of the framers and ratifiers of the Constitution); textual (looking to the meaning of the words of the Constitution alone, as they would be interpreted by the average contemporary "man on the street"); structural (inferring rules from the relationships that the Constitution mandates among the structures it sets up); doctrinal (applying rules generated by precedent); ethical (deriving rules from those moral commitments of the American ethos that are reflected in the Constitution); and prudential (seeking to balance the costs and benefits of a particular rule).

BOBBITT, *CONSTITUTIONAL INTERPRETATION*, *supra* note 62, at 12-13. Many arguments about constitutional interpretation "take on aspects of more than one type." BOBBITT, *CONSTITUTIONAL FATE*, *supra* note 15, at 7.

66. See BOBBITT, *CONSTITUTIONAL FATE*, *supra* note 15, at 6 ("In this task it is not necessary to appeal to rules. You cannot *decide* to be convinced by any of these arguments; nor, of course, need you decide whether they are convincing. There is a legal grammar that we all share and that we have all mastered . . ."); RONALD DWORKIN, *LAW'S EMPIRE* 91 (1986) (noting that "we have no difficulty identifying collectively the practices that count as legal practices in our own culture"). For a discussion of choosing among the various modalities, see Richard H. Fallon, Jr., *A Constructivist Coherence Theory of Constitutional Interpretation*, 100 HARV. L. REV. 1189 (1987).

to ascertain the intent of the framers mean the Texas Constitution cannot adapt to changing circumstances in the modern era.⁶⁷

Notwithstanding the criticisms properly made of the rigid application of historical argument, I use it in this Article to examine language rights under the Texas Constitution because this modality has in the recent past been favored by the right-wing.⁶⁸ Most, but not all, of the leading proponents of the English-Only movement⁶⁹ are conservatives who have aligned themselves politically with adherents of original intent as the sole legitimate method of constitutional adjudication. These English-Only proponents misrepresent the history of multilingual government in Texas when they argue that government in Texas has, until very recently, always been conducted solely in English.⁷⁰ This Article summarizes part of the voluminous evidence that the original intent of the framers of the Texas Constitution, affirmed by long-standing practice, was to ensure the right of every resident of Texas to governmental services in a language known to that resident.

In asserting that the framers of the Texas Constitution recognized a fundamental right to communicate with government in a "known tongue," I am aware of the inherent difficulty of establishing the intent of framers who have been dead for more than a century.⁷¹ Professor Bobbitt asserts that with respect to the United States Constitution, "[T]here is

67. See *In re J.W.T.*, 872 S.W.2d 189, 194 (Tex. 1994) (noting that the Texas Supreme Court has "recognized the adaptability to such changes of our state's fundamental governing law and found considerable strength in the organic nature of its command"); *Ex parte Tucci*, 859 S.W.2d 1, 63 n.7 (Tex. 1993) (González, J., concurring) (rejecting argument that Texas Constitution cannot evolve from its meaning in 1875 because this "ignores countless decisions of this Court and other courts regarding the evolution of organic constitutional guarantees over time"); *Davenport v. García*, 834 S.W.2d 4, 10 (Tex. 1992) (noting that "the dimensions of our constitutionally guaranteed liberties are continually evolving"); *id.* at 19 (stating that "[i]n no way must our understanding of [the Texas Constitution's] guarantees be frozen in the past; rather, our concept of freedom . . . continues to evolve over time"); *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391, 394 (Tex. 1989) (stating that the courts seek the meaning of the Texas Constitution "with the understanding that [it] was ratified to function as an organic document to govern society and institutions as they evolve through time").

68. See BOBBITT, CONSTITUTIONAL INTERPRETATION, *supra* note 62, at xiii (noting that "[m]any on the right settled on historical forms of argument as the sole legitimating form").

69. Cf. ARTHUR M. SCHLESINGER, JR., THE DISUNITING OF AMERICA 107-10 (1992) (rejecting an Official English amendment of the U.S. Constitution because it would increase racial discrimination and resentment, but arguing that bilingualism threatens the unity of the United States).

70. See, e.g., *supra* note 52 (describing requests made by English-Only proponents to state officials to provide legal authority for multilingual government services).

71. See Fallon, *supra* note 66, at 1209-17 (discussing the principal criticisms of historical argument).

not one instance in which it may be said that the Court has definitively established the intent of the Convention on any important issue. Usually when this has been attempted it has subsequently been refuted."⁷²

Additional concerns are raised by the subjectivity any observer brings to the analysis.⁷³ While these concerns reinforce the need to proceed carefully when using historical argument, they cannot eviscerate historical argument entirely. If taken to their most extreme form, they are "an attack on the possibility and validity of historical investigation."⁷⁴ If we cannot establish conclusively the specific intent of particular framers with respect to a given issue confronting the courts, we can establish the "general spirit of specific provisions" in the Texas Constitution.⁷⁵ This spirit can then be used to attach particular *conceptions* to the general *concepts* of the Texas Bill of Rights. *Concepts* are the general principles, such as "equal rights" or "due course of law" set forth in a constitution. Each generation attaches particular *conceptions* to those general concepts, e.g. that due course of law requires that a criminal defendant who does not speak English must be provided an interpreter.⁷⁶ The conceptions applied by the Texas courts to the concepts of the Texas Bill of Rights must comport with the general spirit of the framers who, as documented in this article, claimed a right of access to government in a "known tongue."

72. BOBBITT, *CONSTITUTIONAL FATE*, *supra* note 15, at 11; *see also* Dix, *supra* note 23, at 1403 (asserting that the Texas Court of Criminal Appeals "has not identified any reliable evidence of actual original understanding relevant to the issues it has addressed"); Mikal Watts & Brad Rockwell, *The Original Intent of the Education Article of the Texas Constitution*, 21 ST. MARY'S L.J. 771, 802 (1990) (noting the difficulty, if not futility, of ascertaining original intent).

73. *See* Brest, *supra* note 61, at 219 (describing the problems caused by bringing one's own expectations to what a framer has said); Paul & Van Horn, *supra* note 24, at 936-37 n.34 (noting that "[h]istorical or textual analysis motivated by a perceived need to reach a certain result should not be accepted unless carefully verified and examined in detail for legitimacy in fact and reason").

74. Kay, *supra* note 63, at 252.

75. BOBBITT, *CONSTITUTIONAL FATE*, *supra* note 15, at 13. *Cf.* Edgewood Indep. Sch. Dist. v. Kirby, 777 S.W.2d 391, 395 (Tex. 1989) (holding that gross inequalities in school finance system could never have been contemplated by framers taking into consideration the public opinion of that time).

76. *See* García v. State, 151 Tex. Crim. 593, 210 S.W.2d 574 (1948); BOBBITT, *CONSTITUTIONAL FATE*, *supra* note 15, at 23 (noting terminology used by Professors Dworkin and Bickel); DWORKIN, *supra* note 66, at 70-72 (describing use of concepts and conception in philosophy); *id.* at 90-96 (discussing use of concepts and conceptions in law).

B. *The Use of Historical Argument to Interpret the Texas Constitution*

While no provision of the Texas Constitution requires the use of historical argument,⁷⁷ the Texas courts use historical argument in interpreting the Texas Constitution. The historical modality of constitutional interpretation is the "traditional method of constitutional interpretation" in Texas.⁷⁸ The "fundamental" purpose of any court interpreting the Texas Constitution is to ascertain and give effect to the "intent of the framers of the Constitution and of the people who adopted it."⁷⁹ The Texas Supreme Court follows a methodology very similar to that advocated by Judge Bork:⁸⁰ "In determining that intent, 'history of the times out of which it grew and to which it may be rationally supposed to have direct relationship, the evils intended to be remedied and the good to be accomplished, are proper subjects of inquiry.'"⁸¹ The provisions of the Texas Constitution must be interpreted "in the light of conditions existing at the time of their adoption, the general spirit of the times, and the prevailing sentiments of the people."⁸²

77. Cf. BOBBITT, *CONSTITUTIONAL FATE*, *supra* note 15, at 138 (noting that nothing in the United States Constitution dictates the use of historical argument).

78. *Edgewood Indep. Sch. Dist.*, 777 S.W.2d at 394, *quoted in* *Davenport v. García*, 834 S.W.2d 4, 19 (Tex. 1992).

79. *Deason v. Orange County Water Control & Improvement Dist.*, 151 Tex. 29, 244 S.W.2d 981, 984 (Tex. 1952); *Collingsworth County v. Allred*, 120 Tex. 473, 40 S.W.2d 13, 15 (Tex. 1931); *see also* *Director of the Dep't of Agric. & Env't v. Printing Indus. Ass'n of Texas*, 600 S.W.2d 264, 267 (Tex. 1980) (noting that the fundamental purpose is to give effect to the intent of the adopters of the Constitution) (quoting *Cox v. Robison*, 105 Tex. 426, 150 S.W. 1149, 1151 (1912)); *Bell v. Indian Live-Stock Co.*, 11 S.W. 344, 345 (Tex. 1889) (stating that laws must be interpreted "in accordance with the obvious intent of those who enacted them").

80. *See supra* text accompanying note 62.

81. *Davenport v. García*, 834 S.W.2d at 19 (*quoting* *Markowsky v. Newman*, 134 Tex. 440, 136 S.W.2d 808, 813 (1940)); *Edgewood Indep. Sch. Dist.*, 777 S.W.2d at 394 (same); *Director of Dep't of Agric. & Env't*, 600 S.W.2d at 267 (same); *Travelers' Ins. Co. v. Marshall*, 124 Tex. 45, 76 S.W.2d 1007, 1012 (1934) (same); *Brown v. Strake*, 706 S.W.2d 148 (Tex. App.—Houston [1st Dist.] 1986, no writ) (same); *Terrell v. Middleton*, 187 S.W. 367, 372 (Tex. Civ. App.—San Antonio 1916, no writ) (considering "the circumstances under which the [1875 Constitutional] convention met, the evils sought to be remedied, and the ends to be accomplished, as well as the personnel of the members"); *see* James C. Harrington, *Framing a Texas Bill of Rights Argument*, 24 ST. MARY'S L.J. 399, 412 (1993) [hereinafter *Harrington, Framing a Texas Bill of Rights Argument*] (stating that "[u]sing a historical perspective, one must also reflect on what a constitutional guarantee was designed to accomplish").

82. *Mumme v. Marrs*, 120 Tex. 383, 40 S.W.2d 31, 35 (1931). *See also* *Edgewood Indep. Sch. Dist.*, 777 S.W.2d at 395 (considering "the general spirit of the times and the prevailing sentiments of the people"); *Gallagher v. State*, 690 S.W.2d 587, 592 (Tex. Crim. App. 1985) (en banc) (holding that the intent must be considered "in light of the conditions existing at the time of adoption"); *Director of Dep't of Agric. & Env't*, 600 S.W.2d at 267 (requiring "consideration of the historical climate which existed at the time" the constitu-

The factors properly considered by any court in interpreting the Texas Constitution include "the prior state of the law, the subject-matter, and the purpose sought to be accomplished, as well as . . . the proceedings of the convention and the attending circumstances."⁸³ The Texas Supreme Court has recognized that Texas courts "should be independent and thoughtful in considering the unique values, customs, and traditions of our citizens."⁸⁴ These values, customs, and traditions include those of the native Tejanos, as well as those of German and other non-English-speaking immigrants.⁸⁵ The Texas courts have "the power and *duty* to protect the additional state guaranteed rights of *all* Texans,"⁸⁶ for they

tional provision was enacted in order to give effect to the framers' intent); *Cramer v. Shepard*, 140 Tex. 271, 167 S.W.2d 147, 154, 159 (1942) (describing as a "fundamental canon" the need to consider intent in light of the conditions existing at the time of adoption); *Koy v. Schneider*, 110 Tex. 369, 221 S.W. 880, 890-91 (1920) (stating that "[a]lmost every clause in a state Constitution has a fixed significance—a historic meaning—in the light of which it must be construed and applied"); *Brown v. City of Galveston*, 97 Tex. 1, 75 S.W. 488, 495 (1903) (noting that *State v. McAlister*, 88 Tex. 284, 31 S.W. 187 (1895), construed Section 3 of Article 6 of the Texas constitution "so as to harmonize with conditions that existed at the time of its adoption"). See also HARRINGTON, *TEXAS BILL OF RIGHTS*, *supra* note 45, at 45 (noting that deciphering intent requires a consideration of "the history of the era in which the constitutional provision developed . . . as well as the social and political problems which surrounded enactment of the proviso"); *id.* at 46 (discussing the need to study "the understanding of individual rights held by those drafting and ratifying the constitution"); *Duncan*, *supra* note 44, at 839 (noting that "the social and political setting in which a particular provision originated can be quite persuasive as to how it should be interpreted"); *Linzer*, *supra* note 44, at 1584 (supporting use of the state's "history or collective 'personality' or . . . the circumstances surrounding the adoption of the particular provision").

83. *Cox v. Robison*, 105 Tex. 426, 150 S.W. 1149, 1151 (1912).

84. *Davenport*, 834 S.W.2d at 20; *LeCroy v. Hanlon*, 713 S.W.2d 335, 339 (Tex. 1986) (stating that the "powers restricted and the individual rights guaranteed in the present constitution reflect Texas' values, customs and traditions"). See HARRINGTON, *Framing a Texas Bill of Rights Argument*, *supra* note 81, at 431 (noting that courts "should evaluate Texas societal diversity, culture, traditions, racial and ethnic make-up, culture [sic], and emphasis on individuality when the provision was written").

85. HARRINGTON, *Framing a Texas Bill of Rights Argument*, *supra* note 81, at 433 (noting that demography can influence constitutional development); Lawrence Gene Sager, *Foreword: State Courts and the Strategic Space Between the Norms and Rules of Constitutional Law*, 63 TEX. L. REV. 959, 975 (1985) (stating that relevant strategic concerns in interpreting state constitutions include "[r]egional history, social experience . . . [and] demography").

86. *LeCroy*, 713 S.W.2d at 339 (emphasis added), *quoted in Davenport*, 834 S.W.2d at 11. See also Judith Hession, Comment, *Rediscovering State Constitutions for Individual Rights Protection*, 37 BAYLOR L. REV. 463, 470 (1985) (arguing that "[e]ach citizen is entitled to the unique protections offered by his or her state constitution, and it is the duty and obligation of the highest court of each state to construe these guarantees to ensure that these protections are enforced, even when this necessitates a divergence from precedent established under comparable federal guarantees").

have "always given effect to the intention of the framers and ratifiers" ⁸⁷

While there has been vigorous debate among the justices of the Texas Supreme Court regarding the precise application of this methodology,⁸⁸ the entire Court uses historical argument.⁸⁹ Much of the current debate among the justices of the Texas Supreme Court centers around whether there is anything in the history of particular provisions of the Texas Constitution which justifies a different reading of those provisions than that expounded by courts interpreting analogous provisions of the United

87. *Sears v. Bayoud*, 786 S.W.2d 248, 251 (Tex. 1990). See, e.g., *Davenport*, 834 S.W.2d at 7-8 (reviewing history of free speech guarantee, noting that the "unresponsiveness of Mexico to these attempts to exercise and establish protection of free speech were a contributing factor to Texas' revolution and independence," and noting that broader reading of Texas Constitution's free speech guarantee than of First Amendment is "[c]onsistent with this history"); *Gallagher v. State*, 690 S.W.2d 587 (Tex. Crim. App. 1985) (en banc) (attempting to discern the intent of the framers of Article V, Section 8 of the Texas Constitution); *White v. White*, 108 Tex. 570, 196 S.W. 508, 512-513 (1917) (reviewing history of prior statutes and constitutional provisions to determine meaning of the right to trial by jury guaranteed in Article I, Section 15); *Trapnell v. Sysco Food Services, Inc.*, 850 S.W.2d 529, 545 (Tex. App.—Corpus Christi 1992, writ granted) (refusing to apply collateral estoppel to a case tried before a judge and noting that "[o]ne of the principal grievances the citizens of Texas held against the Mexican Government was the abridgment of the right to trial by jury"), *aff'd on other grounds*, 890 S.W.2d 796, 805 (Tex. 1994) (refusing to approve or disapprove the lower court's analysis of the Texas Constitution).

88. Compare *Ex parte Tucci*, 859 S.W.2d 1, 9 (Tex. 1993) (Doggett, J.) (noting in Appendix I to plurality opinion that five members of the Court continue to subscribe to the broad reading of liberties guaranteed under the Texas Constitution), with *id.* at 30-32 (Phillips, C.J. & Cornyn, J., concurring) (asserting that First Amendment precedents should be considered because the history of Article I, Section 8 does not establish any difference between the guarantees of free speech under the U.S. Constitution and the Texas Constitution).

89. See, e.g., *Ex parte Tucci*, 859 S.W.2d at 9-12 (Doggett, J.) (Appendix I) (discussing history of free speech guarantee of Texas Constitution); *id.* at 30-32 (Phillips, C.J. & Cornyn, J., concurring) (reviewing history of Texas free speech guarantee but concluding that free speech under the Texas Constitution is "the shared legacy of the American heritage, if not of the entire modern constitutional tradition"); *Davenport*, 834 S.W.2d at 30 (Hecht, Cook, & Cornyn, J.J., concurring) (noting that the Texas Courts "look to such things as the language of the constitutional provision itself, its purpose, the historical context in which it was written, the intentions of the framers"); *id.* at 42 (stating that "constitutional construction must be founded upon a careful construction of each provision's language, purpose, history and intent, as well as upon precedent, theory and fundamental values"). But see *Brown v. City of Galveston*, 97 Tex. 1, 1, 75 S.W. 488, 496 (1903) (criticizing "doctrine" of "history and tradition" because it "furnishes no standard or rule by which to determine the validity of any law framed by the Legislature, but leaves each judge to try it according to his own judgment of what constitutes the 'history and traditions' of the state, and what rights have been vested in the people by reason of such 'history and traditions'").

States Constitution.⁹⁰ While many of the rights listed in the Texas Bill of Rights, like those in the federal Bill of Rights, are the historic rights of Englishmen,⁹¹ the framers of the Texas Constitution intended to include a right that arose, not from the English experience with tyrannical kings, but with the *Texas* experience with a government that did not provide its newest residents with sufficient access to governmental services in a language they understood.⁹² The history of the treatment of language rights in Texas under the various Texas Constitutions described below does justify a different reading of the provisions of the current Texas Constitution. Those provisions must be read in light of the framers' assertion of a right to communicate with government in a "known tongue," for the Texas courts applying "these antique words to contemporary situations . . . must remain faithful to the essential purposes of the framers and ratifiers."⁹³

90. See *In re J.W.T.*, 872 S.W.2d 189, 208 (Tex. 1994) (Cornyn, J., dissenting on motion for rehearing) (stating the majority's broad interpretation of the due course clause of the Texas Constitution might be supportable if they "could identify . . . some aspect of history or a tradition unique to Texas to demonstrate that the Texas Constitution confers an authority to intervene in this case when the United States Constitution does not"); see also *Ex parte Tucci*, 859 S.W.2d at 30-32 (Phillips, C.J., concurring) (asserting that First Amendment precedents should be considered because history of Article I, Section 8 does not establish any difference between the guarantees of free speech under the United States Constitution and the Texas Constitution).

91. See GEORGE D. BRADEN ET AL., *THE CONSTITUTION OF THE STATE OF TEXAS: AN ANNOTATED & COMPARATIVE ANALYSIS* 3 (1977) [hereinafter BRADEN, *THE TEXAS CONSTITUTION*].

92. Cf. *Long v. State*, 742 S.W.2d 302, 313 (Tex. Crim. App. 1987), cert. denied, 485 U.S. 993 (1988). In *Long*, the Texas Court of Criminal Appeals noted that Article I, Section 10 of the Texas Constitution and the Sixth Amendment to the United States Constitution are both derived from the English common law. However, the *Long* court stated that the Texas courts have not been "mere mimics of the common law," but have used Texas factual settings to write "independent and at times courageous opinions." The court then cited as an example its decision in *García v. State*, 151 Tex. Crim. 593, 210 S.W.2d 574 (1948), which held an interpreter must be furnished to a defendant who cannot speak English. See also *Koy v. Schneider*, 110 Tex. 369, 221 S.W. 880, 902 (1920) (reaching interpretation "from a study of our Constitution as a whole, regardless of decisions from other states").

93. *Ex parte Tucci*, 859 S.W.2d at 26 (Phillips, C.J., concurring). Because Texas does have a unique history regarding language that requires an interpretation different from that given to similar provisions of the United States Constitution, this Article does not discuss the criticisms made of the "new federalism" whenever there is no such distinct history. Critics who argue the state constitutions should generally be interpreted like the federal constitution acknowledge an exception when the state constitution has a unique history. See, e.g., Herasimchuk, *supra* note 24, at 1513-14 (noting that a divergent result from federal precedent is appropriate when there is "constitutional history supporting broader coverage by the framers of the state constitution" or "interpretation of rights and obligations within a subject matter of special concern to that state" or "specific state tradi-

C. *The Relevance of the History of Prior Texas Constitutions in Interpreting the Current Constitution*

The first constitution of Texas after independence from Mexico was the Constitution of the Republic of Texas, written and adopted in 1836.⁹⁴ The 1845 constitution, written when Texas was admitted into the Union, was the second. Three constitutions followed in relatively quick succession: "1861 to adapt to the Confederacy, 1866 to rejoin the Union, and 1869 to meet the demands of Reconstruction."⁹⁵

Although the current version of the Texas Constitution was adopted in 1876, the courts look to the intent of the framers of prior constitutions when the provisions of the 1876 Constitution are similar to those of prior constitutions.⁹⁶ Twenty-five of the twenty-nine sections of the Bill of Rights of the current Constitution can be traced in whole or in part to the twenty-one sections of the Bill of Rights of the 1845 Constitution. The 1845 Bill of Rights in turn is "manifestly merely an expansion and rear-

tions and public-policy concerns of the citizens"); Earl M. Maltz, *The Dark Side of State Court Activism*, 63 TEX. L. REV. 995, 1000-01 (1985) (contrasting constraints imposed by interpretive review that are lacking in noninterpretive approaches); Paul & Van Horn, *supra* note 24, at 971 (acknowledging that "[if] the Constitution of Texas, by its terms and history, dictates that it should be interpreted differently from the United States Constitution on a given issue, then by all means it is the duty of the courts to so interpret it"). *But see* Sager, *supra* note 85, at 961 (noting the possibility of an argument that United States Supreme Court interpretations should be followed unless there is "some exceptional circumstance in the language, history, or structure of the pertinent constitutional provision").

94. The Texas Constitution "bears the distinction of being one of the few state constitutions that were derived from its own independent, national constitution." *Davenport v. García*, 834 S.W.2d 4, 15 (Tex. 1992). This unusual history legitimizes further an examination of the history of the Texas Constitution when interpreting its provisions. *See Duncan, supra* note 44, at 840.

95. GEORGE D. BRADEN, *CITIZENS' GUIDE TO THE TEXAS CONSTITUTION* 11 (1972); *see also* *LeCroy v. Hanlon*, 713 S.W.2d 335, 339 n.4 (Tex. 1986) (listing the six constitutions of Texas since 1836).

96. *See Mumme v. Mars*, 120 Tex. 383, 40 S.W.2d 31, 35 (1931) (stating that "the readoption of the amendment with the same language formerly employed, without change or limitation, carries with it the meaning which the legislative department had theretofore put upon it"); *Koy v. Schneider*, 110 Tex. 369, 221 S.W. 880, 918 (stating that if a section remained unchanged in a redrafting of the constitution, it is presumed that the framers and voters intended that its meaning be the same as that of the original framers and voters for the proviso); *Cox v. Robison*, 105 Tex. 426, 150 S.W. 1149, 1151 (1912) (holding that the "readoption in a subsequent Constitution of a provision found in the Constitution that it supersedes is presumed to have been with a purpose not to change the law"); *id.* at 1153 (stating it "is not essential that identical conditions and the same reasons should have influenced both the original adoption and subsequent readoption, although it may be assumed that in both instances the conditions were like and the reasons similar").

rangement of the seventeen [sections] of [the] 1836 [Bill of Rights]."⁹⁷ The provisions of the Texas Bill of Rights most pertinent to a claim of language rights are largely derived from the 1836 and 1845 Constitutions.⁹⁸ The intent of the framers of the 1836 and 1845 Constitutions must therefore be examined when deciphering the intent of the framers of the 1876 Bill of Rights.⁹⁹ Determining the intent of the framers of the 1836 Constitution in turn requires an examination of the history of Texas during the Mexican period.¹⁰⁰

D. *The Use of Historical Legislative Practice to Interpret the Texas Constitution*

In addition to considering the original intent of the framers and ratifiers, the Texas courts also look to the practices of the legislature and of the executive branch. Long-standing practices immediately after promulgation of a constitutional provision can assist in the determination of the correct interpretation of the Texas Constitution.¹⁰¹ While the construc-

97. J. E. Ericson, *Origins of the Texas Bill of Rights*, 62 SW. HIST. Q. 457 (1959); see also HARRINGTON, TEXAS BILL OF RIGHTS, *supra* note 45, at 18 (describing the 1836 Declaration of Rights as "set[ting] the course for the 1845 statehood Bill of Rights, which in turn fairly well formed the pattern for its successors of 1861 (Secession), 1866 (post-Civil War), 1869 (Reconstruction), and 1876."); Ponton, *supra* note 48, at 97 (noting that present Texas Bill of Rights is "for the most part, a reproduction of the Bill of Rights of the Texas Constitution of 1845, which, in turn, came from the Constitution of the Republic of Texas of 1836").

98. These include the Equal Rights Provision, Tex. Const. art 1, § 3; the Free Speech Clause, *id.* at art. 1, § 8, the Due Course Clauses, *id.* at art. I, §§ 13, 19; the Guarantee of the Right to Petition the Government, *id.* at art. 1, §§ 27, 29 (declaring everything in the Texas Bill of Rights shall remain inviolate). See generally BRADEN, THE TEXAS CONSTITUTION, *supra* note 91, at 13, 27, 47, 67-68, 81, & 85 (discussing the history of these provisions).

99. Cf. HARRINGTON, TEXAS BILL OF RIGHTS, *supra* note 45, at 39 (noting the need to "decipher the intent of . . . Houston, Rusk, Ellis, de Zavala, Navarro, Hogg, Ochiltree, Throckmorton, Johnson, the Grangers, and those other early Texans who sought a land where they would be treated fairly and where they could live and raise their families with little government intrusion").

100. See Stephen P. Halbrook, *The Right to Bear Arms in Texas: The Intent of the Framers of the Bill of Rights*, 41 BAYLOR L. REV. 629, 632 (1989) (noting that the intent of the adopters of the 1876 Constitution must be determined in the context of the events sparking the Texas Revolution); Harrington, *Framing a Texas Bill of Rights Argument*, *supra* note 81, at 430 (noting that the "reasons for [independence from Mexico] and the goals of the respective founders of the republic must be considered to determine the intent behind constitutional safeguards"); Ponton, *supra* note 48, at 94 (stating the inquiry into the origins of the Texas Bill of Rights must examine Texas history beginning with its history as a state of Mexico).

101. See *Travelers' Ins. Co. v. Marshall*, 124 Tex. 45, 76 S.W.2d 1007, 1023 (1934) (noting the court's interpretation "is consistent with the history of the subject in this state"); *Jones v. Williams*, 121 Tex. 94, 45 S.W.2d 130, 133 (1931) (stating "contemporaneous con-

tion of the Texas Constitution by the Texas Legislature is not binding on the courts, the linguistic policies and practices of the Republic of Texas and early statehood are relevant considerations in interpreting the Texas Bill of Rights.¹⁰²

Having established the standards used by the Texas courts when using historical argument to interpret the Texas Constitution, I now review the historical materials required by those standards to examine the treatment of language in government in Texas.

III. GOVERNMENT AND LANGUAGE IN SPANISH TEXAS

When the Spanish arrived in Texas in 1521, they found numerous Indian tribes, each speaking a variety of languages.¹⁰³ The establishment of missions in Texas was part of a campaign by the Spanish Crown to Christianize and Hispanicize the natives of the Americas.¹⁰⁴ Hispanicization

struction of a constitutional provision by the Legislature, continued and followed, is a safe guide as to its proper interpretation"); *Mumme v. Marrs*, 120 Tex. 383, 40 S.W.2d 31, 35 (1931) (same); *Collingsworth County v. Allred*, 120 Tex. 473, 40 S.W.2d 13, 16 (1931) (giving "great weight" to construction of constitution by seven successive legislatures). Cf. BOBBITT, *CONSTITUTIONAL INTERPRETATION*, *supra* note 62, at 97-98 (defending Judge Bork's testimony as a plausible attempt to show constitutional interpretation had been "ratified by long practice").

102. See *Koy v. Schneider*, 110 Tex. 369, 221 S.W. 880, 885 (1920) (stating that "due consideration and weight (although not necessarily conclusive force) should be given by the courts to a construction placed by the Legislature upon the state Constitution"); *id.* (holding that "if we find a principle established by long-continued practice, we must yield to it, unless we are satisfied that it is repugnant to the plain words of the Constitution"); *Cox v. Robison*, 105 Tex. 426, 150 S.W. 1149, 1156 (1912) (stating that "while not binding . . . , an unchallenged construction of a provision . . . extending over a period of more than a quarter of a century should be heeded and given effect, unless manifestly wrong").

103. There is little information available on most of the languages spoken by Texas natives. There is little agreement even on the number of languages spoken in the pre-Columbian era. Compare MERRITT RUHLEN, *A GUIDE TO THE LANGUAGES OF THE WORLD* 119 (1976) (estimating upwards of 300 Indian languages were spoken in pre-Columbian North America north of Mexico, and 200 such languages are still spoken, although many are on the verge of extinction), with ROBERT F. SPENCER ET AL., *THE NATIVE AMERICANS* 101 (1965) (asserting 149 languages are spoken in North America north of Mexico), and MARTÍN SALINAS, *INDIANS OF THE RIO GRANDE DELTA: THEIR ROLE IN THE HISTORY OF SOUTHERN TEXAS AND NORTHEASTERN MEXICO* 147 (1990) (noting the impossibility of demonstrating linguistic relationships among Indian languages in South Texas because of limited information). Fifteen Texas linguistic groups are identified in Thomas R. Hester, *Historic Native American Populations*, in *ETHNOLOGY OF THE TEXAS INDIANS* 3, 5-7 (Thomas R. Hester ed., 1991). Eleven languages are mentioned in historical records as having been spoken in South Texas. SALINAS, *supra*, at 143.

104. See Gilberto M. Hinojosa & Anne A. Fox, *Indians and Their Culture in San Fernando de Béxar*, in *TEJANO ORIGINS IN EIGHTEENTH-CENTURY SAN ANTONIO* 114 (Gerald E. Poyo & Gilberto M. Hinojosa eds., 1991) [hereinafter *TEJANO ORIGINS*] (describing the Spanish missions as designed to gather, acculturate, and Christianize Native

of the natives required that they abandon native languages and speak Spanish.¹⁰⁵ Thus, the Marqués de Croix, the viceroy of New Spain, sent a decree to Laredo in 1769 complaining about the inability of many Indians to speak Spanish and reminding the authorities that the "pernicious consequences" resulting from this could only be avoided if the mandates of Spanish law are followed "that there should be taught to all the Natives the Spanish Language, and in that language the Christian Doctrine"¹⁰⁶ Under Spanish law, government was to function in one language, and one language only: Spanish.

The fulfillment of the Hispanicization of the native population was attempted by the ravaging of Indians by the Spaniards. The population of Spanish towns in Texas, notwithstanding later characterizations as "Spanish," was overwhelmingly mestizo.¹⁰⁷ The adoption of Indian children by

Texans). The friars at the missions, in what is today the city of San Antonio, did not make assimilation into the Hispanic society a priority; instead, they sought to give the Indians some fluency in the Spanish language and used a Coahuiltecan language dictionary-catechism in the missions. See Gilberto M. Hinojosa, *The Religious-Indian Communities: The Goals of the Friars*, in *TEJANO ORIGINS*, *supra*, at 68-69, 71.

105. In order to justify a Castilian grammar, Nebraska presumed the need for a standardized language for the governance and control of Spanish subjects to Queen Isabela. Alastair Pennycook, *The Concept of Method, Interested Knowledge, & the Politics of Language Teaching*, 23 *TESOL Q.* 589, 592 (1989).

106. El Marqués de Croix, Decree (Oct. 10, 1769) (translated by author from Spanish), *microformed on The Laredo Archives* (St. Mary's University Press) [hereinafter *Laredo Archives*] (microfilm and original documents available in St. Mary's University Academic Library).

107. I use the term "mestizo" here to refer to persons of mixed Spanish and Indian ancestry. Many "mestizos" also have African ancestors. See *TEJANO ORIGINS*, *supra* note 104, at ix. I do not use the term in the specific way it was used throughout Spanish America in the eighteenth century. The Spanish established an elaborate system of racial classifications which included the mestizo (Spanish & Indian parents), the mulatto (Spanish and African), the coyote (Indian and mestizo), and the lobo (Black & Indian). See Gerald E. Poyo, *The Canary Island Immigrants: From Ethnic Exclusivity to Community in Eighteenth-Century Béxar*, in *TEJANO ORIGINS*, *supra* note 104, at 47 [hereinafter Poyo, *The Canary Island Immigrants*]; Hinojosa & Fox, *Indians & Their Culture in San Fernando de Béxar*, in *TEJANO ORIGINS*, *supra* note 104, at 112 [hereinafter Hinojosa & Fox, *Indians & Their Culture*]. For a description of the mixed race status of Tejanos, see Jesús F. de la Teja, *Forgotten Founders: The Military Settlers of Eighteenth-Century San Antonio de Béxar*, in *TEJANO ORIGINS*, *supra* note 104, at 32-33 (noting that while the ethnically mixed were the rule rather than the exception among the original founders of San Antonio, the missionaries collaborated in obscuring the Indian background of the settlers so that racially mixed individuals could pass as Spanish, the preferred social status). The designation of "Spanish" came to signify more about the social status of an individual than the racial background of the individual. Thus, the classification in the 1793 census of 74% of Béxar's native-born population as "Spanish" is misleading and cloaks the importance of intermarriage in the acculturation process. Even among those identified in 1793 as "Indians," exogamous marriages outnumbered endogamous ones thirty-two to twelve. See Hinojosa & Fox, *Indians and Their Culture*, *supra*, at 112.

"Spanish" families¹⁰⁸ and the capture of Indian slaves¹⁰⁹ also played a role in this Hispanicization.

The Hispanicization of Texas natives was far from complete. Many "independent Indians"¹¹⁰ lived outside the daily influence of Spanish settlements and thus maintained their own cultures and languages. Soldier-interpreters in San Antonio aided in communications with these groups.¹¹¹

IV. GOVERNMENT AND LANGUAGE IN MEXICAN TEXAS

After Mexico obtained her independence from Spain in 1821,¹¹² previous Spanish practices regarding language continued. No decrees mandating the use of Spanish were required since, except for independent Indians, the population of Texas in 1821 was Spanish-speaking.¹¹³ The arrival of large numbers of English-speaking Anglo-American immigrants in the 1820's and 1830's quickly changed the linguistic uniformity of Mexican Texas.¹¹⁴

San Antonio's first large group of European immigrants, from the Canary Islands, shared the racist attitudes of the Spanish Empire and looked down on the predominantly mixed-blood population when they arrived in 1731. See Poyo, *The Canary Island Immigrants*, *supra*, at 42. Nonetheless, only five of the thirty-seven *Isleño* marriages between 1742 and 1760 involved marriages between Canary Islanders. See *id.* The other thirty-five marriages were to the native mestizo population. However, Mexicans who married Canary Islanders "accepted their *Isleño* identity, as did their children." *Id.* at 140. Notwithstanding the popular mythology of a "pure-blooded" Spanish population of Canary Islanders in San Antonio, most "Canary Islanders" shared Indian ancestors with the Mexican population and thus were part of this Hispanicization process of the native population.

108. See Hinojosa & Fox, *Indians & Their Culture*, *supra* note 107, at 109-10 (describing adoptions of Indians by well-established San Fernando families).

109. See *id.* at 110 (describing adoption of Indians acquired in slave raids).

110. The term "independent Indian" is suggested in Elizabeth A.H. John, *Independent Indians and the San Antonio Community*, in TEJANO ORIGINS, *supra* note 104, at 123 (noting that "'Independent Indians' rings more politely to the modern ear than the 'indios bárbaros' [barbarous Indians] of eighteenth-century usage").

111. See *id.* at 127.

112. For a brief summary of the events surrounding the independence of Mexico from Spain, see COAH. & TEX. CONST. of 1827, Introduction, *reprinted* in 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 463 (Austin, Gammel Book Co. 1898).

113. Immigration to San Antonio in the late 18th Century came primarily from the northern provinces of Mexico and from the East Texas town of Los Adaes. See Gerald E. Poyo, *Immigrants and Integration in Late Eighteenth-Century Béxar*, in TEJANO ORIGINS, *supra* note 104, at 85-86. At least one Corsican and one Frenchman arrived in Béxar during this period. See *id.* at 91, 94. Baron de Bastrop, a Dutchman who spoke Spanish, settled in Béxar in 1806. See I THE HANDBOOK OF TEXAS 120 (Walter Prescott Webb ed., 1952) [hereinafter I HANDBOOK OF TEXAS].

114. Anglo-Americans had occasionally entered Texas in the early 1800's, but formal immigration did not begin until the formation of Stephen F. Austin's colony in 1821. See II

A. *The First Contacts with Moses Austin: Multilingualism in Texas Government Begins*

Neither English nor Spanish was the first language used when Moses F. Austin arrived in December, 1820 in Béxar,¹¹⁵ then still a part of the Spanish Empire, to secure permission for the entry of Anglo-American immigrants to Texas. Instead, he spoke with Spanish Governor Antonio María Martínez in French, the only language both of them understood.¹¹⁶ The Governor initially refused his permission, but Austin persisted, using Baron de Bastrop, a Dutchman who spoke English, Spanish, and French, as an interpreter.¹¹⁷

Moses Austin died in 1821,¹¹⁸ but his son, Stephen F. Austin, continued his efforts to secure permission from newly-independent Mexico to establish the Anglo-American colony. Stephen F. Austin¹¹⁹ was ultimately successful, and the first Anglo-American immigrants arrived in Texas in December 1821.¹²⁰

HANDBOOK OF TEXAS, 256 (Walter Prescott Webb ed., 1952) (describing occasional presence of Anglo-Americans at Nacogdoches); *see id.* at 77-78 (describing the "Long Expedition," an unauthorized entry of Anglo-Americans between 1819 and 1821); *see id.* at 282 (describing the activities of Philip Nolan).

115. The city known today as San Antonio originally comprised three different communities: the five Franciscan missions, the military presidio of San Antonio, and the town of San Fernando de Béxar. *See* Jesús F. de la Teja & John Wheat, *Béxar: Profile of a Tejano Community, 1820-1832*, in *TEJANO ORIGINS*, *supra* note 104, at 2. These three communities merged into a single entity known as San Antonio de Béxar. *See* *TEJANO ORIGINS*, *supra* note 104, at xx-xxi. The community was commonly called Béxar during the Spanish and Mexican periods. This name survives today as the name for the county in which the modern city of San Antonio is located.

116. *See* DAVID B. GRACY, II, *MOSES AUSTIN: HIS LIFE* 3 (1987).

117. *See id.* at 4; Examination of Moses Austin by Antonio María Martínez (Dec. 23, 1820), in *THE AUSTIN PAPERS* (Eugene C. Barker, ed.), *reprinted in* AMERICAN HISTORICAL ASS'N, II ANNUAL REPORT 370-71 (1919) [hereinafter *AUSTIN PAPERS, 1789-1827*] (stating Bastrop discharged the duty of interpreter); Letter from Baron de Bastrop to Antonio Martínez (about Feb. 1, 1821), in *AUSTIN PAPERS, 1789-1827*, *supra*, at 380-81 (stating he has translated letter from Moses Austin).

118. *See* I HANDBOOK OF TEXAS, *supra* note 113, at 81.

119. All further references in this Article to "Austin" refer to Stephen F. Austin.

120. *See* Stephen F. Austin, *Introduction to the Settlers in What is Called "Austin's Colony," in Texas*, in *LAWS, ORDERS & CONTRACTS ON COLONIZATION, 1821-1829 UNDER WHICH COLONEL STEPHEN F. AUSTIN INTRODUCED AND SETTLED EMIGRANTS IN TEXAS TRANSLATED FROM SPANISH* (Stephen F. Austin, trans., 1829) [hereinafter *LAWS, ORDERS & CONTRACTS ON COLONIZATION*], *reprinted in* 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822-1897*, at 7 (Austin, Gammel Book Co. 1898).

B. *The Efforts of a Small Minority of Anglo-American Immigrants To Learn Spanish*

Stephen F. Austin did not speak Spanish when he took on his father's dream.¹²¹ Baron de Bastrop continued his role as interpreter during this period.¹²² Austin quickly learned Spanish, however, and soon conducted all of his affairs with the Mexican government in Spanish.¹²³ Although he apologized for his poor Spanish in 1828, he wrote Spanish very well.¹²⁴ Austin played a critical role as translator for the Anglo-American immigrants.¹²⁵

121. See Letter from Stephen F. Austin to James W. Breedlove (Oct. 12, 1829), in AUSTIN PAPERS, 1828-1834, *supra* note 1, at 267 (describing his negotiations with the Mexican government and stating, "These arrangements were all made through an interpreter, for at that time I did not understand one word of Spanish.").

122. See Letter from Josef Erasmo Seguin to Stephen F. Austin (Aug. 30, 1821), in AUSTIN PAPERS, 1789-1827, *supra* note 117, at 411 n.1 (letter evidently translated into French by Bastrop); Letter from Austin to Antonio Martínez (Oct. 12, 1821), in AUSTIN PAPERS, 1789-1827, *supra* note 117, at 417 n.2 (letter in Spanish translated by Bastrop); Austin's Memorial to Congress (May 13, 1822), in AUSTIN PAPERS, 1789-1827, *supra* note 117, at 510 (stating it is a literal translation from the French); Letter from Stephen F. Austin to Baron de Bastrop (May 17, 1823), in AUSTIN PAPERS, 1789-1827, *supra* note 117, at 643 (asking Bastrop to translate a letter in English to the *Junta Gubernativa* [Governmental Council] of Texas).

123. See, e.g., Letter from Austin to Emperor Iturbide (Sept. 8, 1822), in AUSTIN PAPERS, 1789-1827, *supra* note 117, at 543; Letter from Austin to José Félix Trespalacios (Jan. 8, 1823), in AUSTIN PAPERS, 1789-1827, *supra* note 117, at 567; Letter from Austin to Erasmo Seguin (Jan. 1, 1824), in AUSTIN PAPERS, 1789-1827, *supra* note 117, at 718-19; Letter from Austin to Supreme Executive Power of the Republic (Oct. 1, 1824), in AUSTIN PAPERS, 1789-1827, *supra* note 117, at 912-913; El Ciudadano Estevan F. Austin, Empresario, Para Introducir Emigrados Estrangeros [sic] [Citizen Stephen F. Austin, To Introduce Foreign Emigrants] (Dec. 23, 1824), *microformed on Texas as Province & Republic: 1795-1845*, Item 20 (Research Publications, Inc.) [hereinafter *Texas as Province & Republic*] (available in St. Mary's University Academic Library) (certifying in Spanish that Anthony R. Clarke was admitted as a colonist; certificate was to be presented to the commissioner so that land titles could be issued); *id.* (June 2, 1831), *microformed on Texas as Province & Republic*, *supra*, Item 9 (certifying in Spanish that Ira R. Lewis was admitted as a colonist).

124. Austin wrote:

Debo pedir la indulgenia [sic] de V.E. por los errores de idioma qe. sin duda abundan en este papel, a consecuencia de mi falta de conocimto. del castellano, pues hace pocos años qe. lo he aprendido.

[I should ask your Excellency for your indulgence for the mistakes in language that no doubt abound in this paper, a consequence of my ignorance of Castilian, since it has been only a few years since I learned it.]

Stephen F. Austin to Minister of *Relaciones* [Relations] (Oct. 2, 1828), in AUSTIN PAPERS, 1828-1834, *supra* note 1, at 122 (translated by author from Spanish).

125. See *infra* text accompanying notes 152-56.

A few of the other early Anglo-American immigrants undertook the study of Spanish seriously, and even used Spanish in communications with each other. Stephen F. Austin, for example, encouraged his brother, James E. Austin, to learn Spanish, reminding him that all "hopes of rising in this country depend on learning to speak and write the language correctly."¹²⁶ James E. Austin wrote a letter to Stephen F. Austin, in May 1823, which began in Spanish and finished in English.¹²⁷ Stephen F. Austin responded with a similar bilingual letter.¹²⁸ Stephen F. Austin wrote to Samuel M. Williams, his private secretary, entirely in Spanish.¹²⁹

Almost all of the Anglo-American immigrants, however, did not speak Spanish.¹³⁰ Nor did many appear to make any particular effort to learn Spanish. *Jefe*¹³¹ (Political Chief) Ramón Músquiz was consoled by the

126. SAMUEL HARMAN LOWRIE, *CULTURE CONFLICT IN TEXAS, 1821-1835* 120-21 (1967) (quoting letter from Stephen F. Austin to J.E.B. Austin).

127. See Letter from J.E.B. Austin to Stephen F. Austin (May 4, 1823), in *AUSTIN PAPERS, 1789-1827*, *supra* note 117, at 635. The body of the letter is in Spanish and is signed "Santiago" (James). A postscript is written in English. In his letter, "Santiago" writes:

Yo creo [que] V. ha hecho mas progreso (en la [sic] estudia [sic] dela [sic] mas hermosa lengua del mundo.) que yo. pero [sic] mi cabeza ha estado un poco trastornada como la de V.

[I think you have made more progress (in the study of the most beautiful language of the world) than me. But [sic] my head has been a bit confused like yours.].

Id. (translated by author from Spanish).

128. See Letter from Stephen F. Austin to J.E.B. Austin (June 13, 1823), in *AUSTIN PAPERS, 1789-1827*, *supra* note 117, at 670-71 (writing a letter largely in Spanish, with a short conclusion in English).

129. See, e.g., Letter from Stephen F. Austin to Samuel M. Williams (Mar. 14, 1835), in *THE AUSTIN PAPERS, 1834-1837* 49 (Eugene C. Barker ed. 1926) [hereinafter *AUSTIN PAPERS, 1834-1837*]; Letter from Stephen F. Austin to Samuel M. Williams (Mar. 21, 1835), in *AUSTIN PAPERS, 1834-1837*, *supra*, at 50.

130. See Memorial to the Legislature (Dec. 22, 1824) (advising the Mexican state legislature that "not one in a hundred of [the Anglo-American immigrants] understand [the Spanish] language"), in *AUSTIN PAPERS, 1789-1827*, *supra* note 117, at 998; *LAWS, ORDERS & CONTRACTS ON COLONIZATION*, *supra* note 120, at 24 (noting that "neither the alcalde, nor one of the members of the ayuntamiento, understands Spanish, neither is it probable that any one will be elected for many years, who does understand it.").

131. While Texas had been a separate province under Spanish rule, after Mexican independence from Spain it became a part of the Mexican state of Coahuila and Texas. The state initially was divided into 3 *departamentos* (departments). The Anglo-American colonists were all in the Department of Béxar, headquartered in what is today San Antonio but was called Béxar at that time. See *TEJANO ORIGINS*, *supra* not 104, at 114. The Department of Béxar included all the territory of what was formerly the Spanish province of Texas. *CONSTITUTION OF COAHUILA & TEXAS OF 1827*, art. 7, reprinted in 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822-1897*, at 424 (Austin, Gammel Book Co. 1898). The *Jefe* (often spelled "*Gefe*" in documents of this era) was the Chief of the Department and was responsible for ensuring the enforcement of Mexican law in the Department. See Decree

availability of Stephen F. Austin and Samuel M. Williams as interpreters for the colonists since

it is certainly a misfortune [*desgracia*] that the Citizens who compose [the colony] do not possess the Castilian language, which failing cannot be overcome, but persuaded by you that they are men of providence [*providad*] and good judgment, I console myself with this idea and the hope that I confide in you and our good friend Don Samuel. . . .¹³²

By 1830, Mexican Secretary of Relations Lucas Alamán recognized the lack of progress made by the Anglo-American immigrants in learning Spanish and suggested this could be encouraged by publishing newspaper articles in Spanish in the Texian newspapers.¹³³

In reply, Austin agreed that extending the reach of the Spanish language was useful and noted his long-standing desire to found a college for instruction in the two languages. Austin stated his intent to introduce such a proposal before the state legislature in Saltillo.¹³⁴ Austin also believed that one of the most effective ways for the immigrants to learn Spanish would be to integrate Texas into the Mexican economy, particularly by easing tariffs to aid the cotton industry.¹³⁵

C. *The Establishment of Bilingual Government in Texas to Accommodate English-Speaking Anglo-American Immigrants*

Because most Anglo-American immigrants failed to learn Spanish, Austin's Spanish-speaking skills were critical to the success of the colony. The Spanish government had recognized the problems raised by the influx of non-Spanish-speaking immigrants, and authorized Austin to gov-

No. 13 (1825) (State of Coahuila and Texas), reprinted in 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822-1897*, at 121-24 (Austin, Gammel Book Co. 1898) (describing the powers the of Chief). Each municipality sent its reports to the *Jefe* in Béxar; the *Jefe* then transmitted his own reports to the state capital in Saltillo. *Jefe* was quickly assimilated into the Texian vocabulary. Consistent with Texian practice, this Article will not italicize "jefe" hereafter.

132. Letter from Ramón Músquiz to Stephen F. Austin (Jan. 22, 1828) (translated by author from Spanish), in *AUSTIN PAPERS, 1828-1834*, *supra* note 1, at 8-9.

133. See Letter from Lucas Alamán to Stephen F. Austin (Aug. 25, 1830), in *AUSTIN PAPERS, 1828-1834*, *supra* note 1, at 473.

134. See Letter from Stephen F. Austin to Lucas Alamán (Sept. 20, 1830), in *AUSTIN PAPERS, 1828-1834*, *supra* note 1, at 490-91. The proposal was never realized. It is described *infra* IV.E.

135. Letter from Stephen F. Austin to Minister of *Relaciones* [Relations] (Oct. 7, 1828) (translated by author from Spanish), in *AUSTIN PAPERS, 1828-1834*, *supra* note 1, at 122-30 (requesting reduction of tariffs because these privileges will cause "a direct and intimate communication between the adopted inhabitants and native Mexicans; there will be binds of . . . language").

ern and administer justice in the colony until a government could be organized.¹³⁶ Presumably, this administration was to be conducted in English. After independence from Spain was secured, the Mexican government granted Austin similar authority.¹³⁷ The implicit assumption that communication with the Mexican government would be in Spanish was made explicit in 1825 in Austin's contract with the government of the Mexican state of Coahuila and Texas. Article 8 of the Contract provided:

The official communications with the government, and with the authorities of the state, instruments, and other public acts, must be written in the Spanish language, and when new towns are formed he shall promote the establishment of schools in the Spanish language, in such towns.¹³⁸

The other *empresarios*, as the colony organizers were known, had similar provisions in their colonization contracts.¹³⁹ The instructions issued under the colonization law of March 24, 1825, which authorized Austin's colony and the other Anglo-American colonies, also specifically required all communications with the Mexican government to be conducted in Spanish:

136. See Letter from Governor Antonio Martínez to Stephen F. Austin (Aug. 21, 1821), *reprinted in* 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822-1897*, at 27 (Austin, Gammel Book Co. 1898).

137. See Decree of the Emperor (Feb. 18, 1823), *reprinted in* 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822-1897*, at 32 (Austin, Gammel Book Co. 1898) (authorizing Austin to organize the colonists into a militia and to administer justice). The authorization to organize a militia was extended in 1825. Contract with the Government of the State for the Colonization of 500 Families, art. 6 (Apr. 27, 1825), *reprinted in* 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822-1827*, at 48-49 (Austin, Gammel Book Co. 1898). The terms of this contract were incorporated into each of the colonization contracts Austin entered into. See, e.g., Contract between the Government of the State and Austin; and appointment of the latter as commissioner, Article 7 (May 15, 1828), *reprinted in* 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822-1827*, at 54 (Austin, Gammel Book Co. 1898) (including all duties and obligations "which, although not expressed in this contract, are inserted in his contract for five hundred families, extended by this government the 27th of Apr., 1825").

138. Contract with the Government of the State for the Colonization of 500 Families, art. 8 (Apr. 27, 1825), *reprinted in* 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822-1897*, at 48 (Austin, Gammel Book Co. 1898). The provisions of this contract were incorporated into each of the other colonization contracts Austin entered into. See *supra* note 137.

139. Hayden Edward's contract, for example, differed only slightly from Austin's:

All official communications with the government, or with the authorities of the state, and all instruments and other public acts, shall be written in Spanish. And, when the settlements have been established, it shall likewise be the duty of the empresario to establish schools for the Spanish language.

Hayden Edward's Contract for Introduction of 800 Families into the Department of Texas (Apr. 15, 1825), *reprinted in* H. YOAKUM, 1 *HISTORY OF TEXAS FROM ITS FIRST SETTLEMENT IN 1685 TO ITS ANNEXATION TO THE UNITED STATES IN 1846*, at 463 (1855).

Art. 26. All the public instruments, titles, or other documents, issued by the commissioner, shall be written in Spanish, the memorials, decrees, and reports of the colonists or empresarios on any subject whatever, shall be written in the same language, whether they are to be transmitted to the government, or preserved in the archives of the colony.¹⁴⁰

Communications with the national government, communications with the state government, and the records of local government were all required to be in Spanish. However, the Mexican government and the Anglo-American immigrants themselves expected that local government within the Anglo-American settlements could be conducted in English, the only language understood by virtually all of the immigrants.¹⁴¹ Mexican law and practice assisted the immigrants in their communications with the Spanish-speaking government. By 1828, Mexican law required that the secretary of the *ayuntamiento*¹⁴² (municipality) be bilingual so that the secretary could translate laws and communications from the government to the immigrants.¹⁴³ Similarly, the secretary could translate the English-language proceedings of the *ayuntamiento* into Spanish and transmit them to the Jefe at Béxar,¹⁴⁴ or occasionally, to the state govern-

140. Instructions from Coahuila & Texas Legislature to Commissioner Stephen F. Austin (Sept. 4, 1827), reprinted in *LAWS, ORDERS & CONTRACTS ON COLONIZATION*, *supra* note 120, at 71-72. A slightly different translation of these instructions can be found in 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822-1897*, at 183 (Austin, Gammel Book Co. 1898).

141. See EUGENE C. BARKER, *MEXICO & TEXAS, 1821-1835*, at 22-23 (Russell & Russell 1965) (1928) [hereinafter BARKER, *MEXICO & TEXAS*] (stating that "local government was never a source of serious annoyance to the colonists" because "it was always in their own hands.").

142. The *ayuntamiento* was composed of the *alcalde*, *regidores*, and the *síndico procurador*. See I HANDBOOK OF TEXAS, *supra* note 113, at 92. The *alcalde* is often translated as the "mayor," although his duties included those of police judge (trying civil and criminal cases) and police officer (apprehending individuals charged with misdemeanors). See *id.* at 25. A *regidor* was a member of the city council. See II HANDBOOK OF TEXAS, *supra* note 114, at 457. The *síndico procurador* was a notary and city attorney; occasionally, he also served as the municipality's treasurer. See *id.* at 614. These terms were among the first Spanish words incorporated into the Texian vocabulary. Consistent with Texian practice, this Article will not hereafter italicize them.

143. See *infra* text accompanying note 157. For examples of Spanish-language communications transmitted by Mexican officials to Anglo-American officials, see Letter from José Antonio Saucedo to Alcalde Sylvanus Castleman (Feb. 14, 1824), in AUSTIN PAPERS, 1789-1827, *supra* note 117, at 742 (advising Anglo-American Alcalde in Spanish that Stephen F. Austin has the title of "Gefe [sic] Político y Juez" [Political Chief & Judge]); Letter from J. Antonio Padilla to Barrett & Gritten (Sept. 2, 1835), in AUSTIN PAPERS, 1834-1837, *supra* note 129, at 110-11 (advising commissioners in Spanish about military movements).

144. For examples of documents translated from English into Spanish and sent to the Jefe, see Ayuntamiento of San Felipe to Political Chief (Jan. 24, 1828), in AUSTIN PAPERS,

ment in Saltillo.¹⁴⁵ The Mexican government was prepared to assist the immigrants in finding the bilingual secretaries required by law.¹⁴⁶ The Mexican government also responded to the needs of the monolingual Anglo-American immigrants by selecting bilingual government officials where possible.¹⁴⁷

The importance of a bilingual secretary was recognized by the immigrants themselves.¹⁴⁸ They were quite willing to pay for this service. The Ayuntamiento of San Felipe de Austin, for example, budgeted \$350 a year in 1828 for the "[s]alary of a Secretary learned in the Spanish and English languages, who can also serve as translator."¹⁴⁹ Samuel M. Williams, who was appointed Secretary by the Ayuntamiento, "in consequence of the difficulty which exists of getting persons acquainted with both English and Spanish, as well as in view of the burden of the labors of the secretary of the ayuntamiento, . . . has thought well to fix one thou-

1828-1834, *supra* note 1, at 160-62; Brazoria Election Returns (Dec. 16, 1833), *microformed on* Microfilm of The B  xar Archives at the University of Texas Archives, 1822-1836, Roll 159, Frame 615 (Univ. of Texas) [hereinafter B  xar Archives] (available in City of San Antonio Public Library); Notice of J.B. Miller to the Public (July 1, 1835), *in* AUSTIN PAPERS, 1834-1837, *supra* note 129, at 79-80.

145. See Letter from Ayuntamiento of San Felipe to Members of Legislature (Sept. 27, 1830), *in* AUSTIN PAPERS, 1828-1834, *supra* note 1, at 499-500; Letter from Samuel M. Williams to Governor (June 30, 1831), *in* AUSTIN PAPERS, 1828-1834, *supra* note 1, at 671-72.

146. Letter from J. Antonio Padilla to Stephen F. Austin (Aug. 9, 1828), *in* AUSTIN PAPERS, 1828-1834, *supra* note 1, at 89-90 (proposing a search for bilingual secretaries in the United States, so long as they are not Spaniards, or a search in Mexico).

147. See Official letter from Governor Luciano Garc  a to Baron de Bastrop (July 26, 1823), *reprinted in* STEPHEN F. AUSTIN, ESTABLISHING AUSTIN'S COLONY: THE FIRST BOOK PRINTED IN TEXAS WITH THE LAWS, ORDERS & CONTRACTS OF COLONIZATION 42-43 (David B. Gracy, II, ed., Pemberton Press 1970) (1829) (noting Bastrop was commissioned to organize the new ayuntamiento of San Felipe de Austin "on account of his geographical knowledge, and his understanding the English language"); Letter from Ram  n M  squiz to Stephen F. Austin (July 24, 1828), *in* AUSTIN PAPERS, 1828-1834, *supra* note 1, at 75 (advising Austin he has informed the Governor of the necessity of assisting the Alcalde and Ayuntamiento with the appointment of someone who understands English); Letter from Stephen F. Austin to Governor Jos   Mar  a Viesca (May 31, 1830), *in* AUSTIN PAPERS, 1828-1834, *supra* note 1, at 398 (recommending C. Miguel Arciniega for appointment as commissioner because he has the advantage of speaking English). Cf. Letter from Stephen F. Austin to Ayuntamiento of Nacogdoches (May 30, 1833), *in* AUSTIN PAPERS, 1828-1834, *supra* note 1, at 975-77 (supporting the appointment of George Fisher as collector because "his knowledge of the English language will give more facilities in his intercourse with the people").

148. See *Minutes of the Ayuntamiento of San Felipe de Austin, 1828-1832*, 21 SW. HIST. Q. 299, 326 (Eugene C. Barker ed., 1918) (recording appointment of Samuel M. Williams as secretary on January 10, 1829 since "it is very necessary to appoint a secretary acquainted with the two languages").

149. *Id.* at 309.

sand dollars a year for his services"¹⁵⁰ The Ayuntamiento met Williams' demand.¹⁵¹

Stephen F. Austin also played an important role as translator. Austin translated Spanish-language communications from the Mexican government and transmitted these to the immigrants.¹⁵² He also prepared Spanish-language translations of the English-language documents composed by the Anglo-American immigrants.¹⁵³ Austin was "appealed to again and again for assistance in clearing up embarrassing situations in which Americans found themselves as a consequence of their inability to present their cases to the authorities."¹⁵⁴ Austin performed these services

150. *Id.* at 395.

151. *See id.*

152. *See, e.g.*, Letter from Austin to Alcalde James Cummins (Feb. 26, 1824), in AUSTIN PAPERS, 1789-1827, *supra* note 117, at 746-47 (advising him that a letter from the Jefe states that Texas is free of import duties for seven years); Letter from José Antonio Saucedo to Colonists (Mar., 1824) (translation by Austin), in AUSTIN PAPERS, 1789-1824, *supra* note 117, at 753-54 (informing the populace that they have been given a temporary chief to help organization); Letter from Stephen F. Austin to Josiah H. Bell (Apr. 20, 1824), in AUSTIN PAPERS, 1789-1827, *supra* note 117, at 770 (translating Constitutional Decree); Political Chief's Proclamation (May 20, 1824) (translation by Austin), in AUSTIN PAPERS, 1789-1827, *supra* note 117, at 794-95; *Minutes of the Ayuntamiento of San Felipe de Austin, 1828-1832*, *supra* note 148, at 303 (recording that Stephen F. Austin on February 10, 1828 read to the newly elected English-speaking regidores "a translation of the laws of the state on the administration of justice, on the political administration of towns, and a discussion of the powers and duties of the ayuntamiento"); Letter from J. Antonio Padilla to Stephen F. Austin (Aug. 9, 1828), in AUSTIN PAPERS, 1828-1834, *supra* note 1, at 89 (enclosing a municipal ordinance for Austin to translate so that it can be presented to the Ayuntamiento and used as a model for developing their own municipal ordinance); Letter from Ramón Músquiz to Austin (Nov. 26, 1829), in AUSTIN PAPERS, 1828-1834, *supra* note 1, at 292 (asking Austin to translate Músquiz' exposition against a government decree freeing all slaves and to publish it in the English-language *Texas Gazette*).

153. *See, e.g.*, Letter from Austin to Political Chief (Mar. 25, 1828), in AUSTIN PAPERS, 1828-1834, *supra* note 1, at 28 (enclosing election returns); Letter from Ramón Músquiz to Stephen F. Austin (Aug. 12, 1829), in AUSTIN PAPERS, 1828-1834, *supra* note 1, at 246 (noting that necessary reports had not been filed because the Alcalde and Ayuntamiento do not speak Spanish and requesting Austin's assistance); Letter from Thomas Davis to Ramón Músquiz (Sept. 14, 1829), in AUSTIN PAPERS, 1828-1834, *supra* note 1, at 257-58 (explaining that Austin's illness had prevented the sending of necessary correspondence and advising that Samuel Williams had returned and would take on Spanish-language duties).

154. LOWRIE, *supra* note 126, at 121.

without charge,¹⁵⁵ although he reminded the immigrants of the burdens the role of translator placed on him.¹⁵⁶

By 1828, the Mexican government liberalized the requirement that local government archives be maintained in Spanish. Article 37 of the Municipal Ordinance for the Government and Regulation of the Ayuntamiento of San Felipe de Austin not only permitted, but *required* that bilingual records be maintained.¹⁵⁷ Article 38 required that the Ayuntamiento's secretary translate all orders and decrees into English and file them, or suffer a fine of \$25.¹⁵⁸ While the first minutes of the Ayuntamiento are entirely in Spanish, later minutes were maintained in Spanish on the left hand page and in English on the right hand page.¹⁵⁹ Bilingualism rapidly became the norm. For example, notices pertaining to religious matters were sent bilingually in Nacogdoches.¹⁶⁰

Stephen F. Austin complied with the Mexican laws requiring all local governmental records to be maintained in Spanish, or, later, in both

155. Austin did charge the immigrants \$60 for title to their land as "compensation for the labor of translating and attending to getting the titles for the applicant, which I am not bound to do, as empresario unless paid for it." *Government of Austin's Colony, 1821-1831*, 21 Sw. Hist. Q. 223, 240 (Eugene C. Barker ed., 1918) [hereinafter Barker, *Government of Austin's Colony*] (quoting Austin). Austin had to keep an office with a bilingual secretary and clerks. See Statement from Stephen F. Austin to _____ Martin (Sept. 14, 1832), in AUSTIN PAPERS, 1828-1834, *supra* note 1, at 859-65 (first name of recipient of statement unknown). However, often the fee was never paid. See Barker, *Government of Austin's Colony*, *supra*, at 241.

156. Letter from Stephen F. Austin to J.H. Bell (Apr. 4, 1829), in AUSTIN PAPERS, 1828-1834, *supra* note 1, at 200-05 (complaining that there is no bilingual secretary "and the only way I see of getting along is for me to do all the writing that has to be done in Spanish—it is a much heavier burden than is supposed, but it seems that when I undertook the colony I enlisted [sic] myself for life"); LAWS, ORDERS & CONTRACTS ON COLONIZATION *supra* note 120, at 24-25 (reminding Anglo-American immigrants of their obligation to maintain records in Spanish and to hire a bilingual secretary of the ayuntamiento, reminding them that Austin and S.M. Williams have done all such translations, and concluding that "[f]or eight years I have endeavored to be a faithful servant to this colony; it ought not to be supposed that I am to be its slave for life").

157. See *Minutes of the Ayuntamiento of San Felipe de Austin, 1828-1832*, *supra* note 148, at 319.

158. See *id.*

159. The minutes of the Ayuntamiento of San Felipe de Austin for 1828 to 1832 consist of three volumes. The first volume, consisting of 63 sheets written on both sides, has the first 41 sheets entirely in Spanish, except for sheets six, seven, half of eight, and eleven. Thereafter the record is bilingual, with the minutes in Spanish on the left-hand page and the minutes in English on the right-hand page. See *id.* at 299 n.1.

160. See The Board of Piety of Nacogdoches to the Settlers of this Frontier (Mar. 10, 1831) (circular in English & Spanish), *microformed on Texas as Province & Republic*, *supra* note 123, Item 21.

Spanish and English.¹⁶¹ However, most Anglo-American local government officials did not. Local government in the ayuntamientos populated by Anglo-American immigrants was conducted in English. The immigrants took a required oath supporting the Mexican Constitution in English.¹⁶² Elections¹⁶³ were held in English.¹⁶⁴ Election campaigns were conducted in English.¹⁶⁵ Ordinances were enacted in English.¹⁶⁶ Official notices were published in English.¹⁶⁷ Official correspondence was in

161. See, e.g., Circular from Stephen F. Austin to Militia Officers (May 19, 1830) (Spanish translation of circular), in *AUSTIN PAPERS*, 1828-1834, *supra* note 1, at 393; Letters from Stephen F. Austin to Ayuntamiento of San Felipe (Sept. 27, 1830) (Spanish translation of letters), in *AUSTIN PAPERS*, 1828-1834, *supra* note 1, at 499; Letter from Stephen F. Austin to Ayuntamiento of San Felipe (Dec. 7, 1830) (Spanish translation of letter), in *AUSTIN PAPERS*, 1828-1834, *supra* note 1, at 550-51.

162. See Letter from Josiah H. Bell to Austin (May 1, 1824), in *AUSTIN PAPERS*, 1789-1827, *supra* note 117, at 782-83 (attesting in English that oaths were given).

163. The right of suffrage in Coahuila and Texas was limited to native-born citizens and to foreigners who had acquired letters of citizenship. See Decree no. 24, art. 5 (1826) (State of Coahuila and Texas), reprinted in 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822-1897*, at 147 (Austin, Gammel Book Co. 1898). However, the state's law of colonization permitted the foreign settlers "to elect and be elected members of the municipal body." Decree no. 16, art. 42 (1825) (State of Coahuila and Texas), reprinted in 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822-1897*, at 105 (Austin, Gammel Book Co. 1898).

164. See Election returns (Aug. 16, 1823), in *AUSTIN PAPERS*, 1789-1827, *supra* note 117, at 686-87; Election proclamation (Dec. 3, 1823), in *AUSTIN PAPERS*, 1789-1827, *supra* note 117, at 714; Election return and oath of office for Alcalde (Jan. 10, 1824), in *AUSTIN PAPERS*, 1789-1827, *supra* note 117, at 719-20. See also Election Returns (Nov. 8, 1834), in *AUSTIN PAPERS*, 1834-1837, *supra* note 129, at 23 (discussing election on whether to have representation at provisional Congress to be held at Béxar on Nov. 15, 1834).

165. See To the Public (Dec. 16, 1832) (showing response from Henry Smith and others to a hand-bill stating the author of the handbill would not vote for William H. Wharon for Brigadier General), *microformed on Texas as Province & Republic*, *supra* note 123, Item 30.

166. See, e.g., Ayuntamiento of Brazoria, Ordinance Regulating Municipal Taxes (May 13, 1833), *microformed on Texas as Province & Republic*, *supra* note 123, Item 38.

167. See Letter from Stephen F. Austin to Junta Gobernativa [Governmental Council] of Texas (May 17, 1823), in *AUSTIN PAPERS*, 1789-1827, *supra* note 117, at 644 n.1 (stating that letter in English was to be sent to Baron de Bastrop and to the Colorado & Brazos settlers); To the settlers in Austin's settlement (July 1823), *microformed on Texas as Province & Republic*, *supra* note 123, Item 3 (giving notice from Austin regarding the administration of the settlement); Proclamation from Stephen F. Austin to Colonists (Dec. 2, 1823), in *AUSTIN PAPERS*, 1789-1827, *supra* note 117, at 713; Organization of Militia Battalion (June 22, 1824), in *AUSTIN PAPERS*, 1789-1827, *supra* note 117, at 838-39; Public Notice from Stephen F. Austin to His Colonists (Mar. 16, 1828), in *AUSTIN PAPERS*, 1828-1834, *supra* note 1, at 26-27; *Minutes from the Ayuntamiento of San Felipe de Austin*, *supra* note 148, at 406 (requiring on Mar. 2, 1829 that state law concerning hospitals, apothecaries, and physicians be translated and posted in public places so those concerned could present themselves to the ayuntamiento with their diplomas); Notice from Stephen F. Austin to Colonists (Nov. or Dec. 1829), in *AUSTIN PAPERS*, 1828-1834, *supra* note 1, at 295-96; Public Notice from Stephen F. Austin to Public (Oct. 9, 1832), in *AUSTIN PAPERS*, 1828-

English.¹⁶⁸ Militia orders were published in English.¹⁶⁹ Licenses were issued in English.¹⁷⁰ Legal forms and writs were published in English.¹⁷¹ Promissory notes were printed in English.¹⁷² Administrators of probate estates provided notice of estate auctions in English.¹⁷³ Mexican governmental proceedings in Spanish were translated into English. Judicial proceedings in Spanish were translated.¹⁷⁴ Gubernatorial speeches were translated into English.¹⁷⁵ Political writings were translated into English.¹⁷⁶

This documentary evidence establishes that, contrary to the claims of English-Only proponents, multilingual government in Texas is not an invention of the modern era. It is a Texas tradition established by the Mexican government in the 1820's and 1830's to benefit monolingual English-speaking Anglo-American immigrants. The Texas tradition of multil-

1834, *supra* note 1, at 870-71; Milam's Colony (1834), *microformed on Texas as Province & Republic*, *supra* note 123, Item 52 (showing notice from R.M. Williamson advising land certificate holders of his appointment as commissioner and requiring them to report to him to receive land titles).

168. See, e.g., Official Letter from Stephen F. Austin to Ayuntamiento of San Felipe (Oct. 18, 1830), in AUSTIN PAPERS, 1828-1834, *supra* note 1, at 516; Letter from Ayuntamiento of San Felipe to Stephen F. Austin (Nov. 24, 1830), in AUSTIN PAPERS, 1828-1834, *supra* note 1, at 539-40; Maritime Custom-House of Galveston (Oct. 6, 1831), *microformed on Texas as Province & Republic*, *supra* note 123, Item 771A (citing letter from Commandant General Terán asking all to forget past difficulties of George Fisher with Texans).

169. See Batallion Order from Stephen F. Austin to Militia (Oct. 18, 1830), in AUSTIN PAPERS, 1828-1834, *supra* note 1, at 515-16.

170. See License for Coasting Vessel (Aug. 1823?), in AUSTIN PAPERS, 1789-1827, *supra* note 117, at 691-92; Marriage bond (Apr. 29, 1824), in AUSTIN PAPERS, 1789-1827, *supra* note 117, at 779-80.

171. See Forms & Writs (May 24, 1824), in AUSTIN PAPERS, 1789-1827, *supra* note 117, at 800-03 (including forms for attachment, warrant, subpoena, & bail bond).

172. See Promissory Note (1829), *microformed on Texas as Province & Republic*, *supra* note 123, Item 10. The form provided at the bottom: "I execute this note in this language because I do not understand Spanish." *Id.*

173. See Public Auction (Jan. 9, 1834), *microformed on Texas as Province & Republic*, *supra* note 123, Item 45.1.

174. See *Minutes of the Ayuntamiento of San Felipe de Austin, 1828-1832*, 23 SW. HIST. Q. 214, 220 (Eugene C. Barker ed., 1920) (ordering "the translation of the evidence taken in the case of Ingram & League").

175. See Governor Viesca's Inaugural Address (Apr. 15, 1835) (published by "Coahuiltexanus"), *microformed on Texas as Province & Republic*, *supra* note 123, Item 823.

176. See ¡Virtuoso José María Viesca! (1834) (translation of notice exulting over election of new deputy to Congress), *microformed on Texas as Province & Republic*, *supra* note 123, Item 815A.

ingual government established by these Anglo-American immigrants was later followed by native Tejanos and by European immigrants.¹⁷⁷

D. *Bilingual Practices of the Anglo-American Immigrants Not Authorized by Mexican Law*

Mexican law envisioned a limited form of bilingual government to accommodate the needs of the Anglo-American immigrants, with Spanish required for all communication outside the Anglo-American ayuntamientos. In actual practice, however, bilingualism was permitted in communications outside the Anglo-American ayuntamientos. Communications required to be sent to the Mexican government in Spanish, for example, were sent in both Spanish and English.¹⁷⁸

The paucity of Spanish-speakers among the Anglo-American immigrants often forced the ayuntamientos to appoint secretaries who, in violation of Mexican law, were not bilingual.¹⁷⁹ These monolingual officials sent documents written only in English to the Jefe in Béxar. These included election returns,¹⁸⁰ reports,¹⁸¹ and requests for instructions.¹⁸²

177. See, e.g., *infra* part VI.D.1 (describing Spanish-English records in San Antonio during the Republic of Texas period).

178. See, e.g., Letter from J.B. Patrick to Chief of Department in Béxar (Nov. 9, 1833) (bilingual letter regarding animals claimed by Béxar citizens), *microformed on* Béxar Archives, *supra* note 144, Roll 159, Frames 104-05; Letter from Ayuntamiento of San Patricio (July 14, 1834) (bilingual letter seeking direction on petition to banish individual from colony), *microformed on* Béxar Archives, *supra* note 144, Roll 162, Frame 0509.

179. See, e.g., *Minutes of the Ayuntamiento de San Felipe, 1828-1832*, 22 Sw. HIST. Q. 78 (Eugene C. Barker ed., 1918) (appointing Thomas G. Gazley as secretary Pro Tem in February 1830 "until a secretary acquainted with the Castilian language can be procured").

180. See Election Returns of San Patricio (Jan. 11, 1834), *microformed on* Béxar Archives, *supra* note 144, Roll 160, Frame 0082. Frame 0083 contains election returns for "Judges of first instance." A Spanish translation exists for Frame 0083 (Frame 0084); none exists for the returns in Frame 0082. See also Election Returns of Brazoria (May 20, 1834), *microformed on* Béxar Archives, *supra* note 144, Roll 161, Frame 0616; cf. Election Returns of San Patricio (Aug. 10, 1834), *microformed on* Béxar Archives, *supra* note 144, Roll 162, Frame 0881 (election returns in English except for a translation of "Electors Voted For" ("Ciudo. Para Electores"), the location of the polling place, e.g. "De Béxar," and "De Goliad," and the titles of the reporting officers ("Secretario del Ayuntamiento" [Secretary of the Ayuntamiento] and "Presidente del Ayuntamiento" [President of the Ayuntamiento])).

181. See Letters from Green DeWitt to Ramón Músquiz (May 8, 1829), *microformed on* Béxar Archives, *supra* note 144, Roll 122 (reporting Indian movements). DeWitt sent 3 reports in English on Indian activities, all dated May 8, 1829; see also Letter from Ayuntamiento of San Patricio (Aug. 10, 1834), *microformed on* Béxar Archives, *supra* note 144, Roll 162, Frame 0882 (explaining inability to comply with all details of electoral law); Declarations Against John Houlehan (Aug. 16, 1834 - Sept. 4, 1834) (declarations by immigrants against John Houlehan for disturbing election proceedings; only Spanish is a notation "Copia del [sic] Declarations [sic] Contra Dn. Juan Hulihan" ["Copy of Declara-

English-language petitions were accepted.¹⁸³ Even petitions to the state government were presented in English.¹⁸⁴

Instead of filing required reports in English, some ayuntamientos without a Spanish-speaking secretary chose not to file any reports. Mexican government officials complained about this problem and sought to have the reports filed as soon as a Spanish-speaking secretary became available.¹⁸⁵ The Alcalde of San Felipe de Austin, for example, apologized in February 1830 for lacking "one of the requisites to comply with my obligations, that is not understanding the Castilian language." He promised to send the necessary reports with the next mail.¹⁸⁶ With no Spanish-speakers among the ayuntamiento's officials, the minutes began to be maintained solely in English, although Mexican law required these records to be maintained in Spanish and English.¹⁸⁷ In April 1830, Stephen F. Austin sent the overdue reports caused by the Alcalde's ignorance of Spanish. Austin noted that he did not feel that the fine for late

tions Against Juan Hulihan"], *microformed on* Béxar Archives, *supra* note 144, Roll 162, Frames 0905-0911.

182. See Letter from Ayuntamiento of Liberty to Political Chief of Department of Béxar (May 31, 1834), *microformed on* Béxar Archives, *supra* note 144, Roll 161, Frame 0777 (requesting decision on which of two individuals is first regidor).

183. See Letter from Stephen F. Austin to *Ad interim* Governor Luciano García (Aug. 11, 1823), in AUSTIN PAPERS, 1789-1827, *supra* note 117, at 685. This letter in Spanish requests that a priest be sent. Austin stated, however:

Aquí firmaron varios Ynds. con la [sic] idioma Ingles pr. cuya causa no se asientan.
[Here signed various individuals in the English language, for which cause do not be
offended].

Id. (translated by author from Spanish). See also Letter from Edwin Waller to Political Chief for the Department of Béxar (1833) (requesting approval of tax rates for Ayuntamiento of Brazoria), *microformed on* Bexar Archives, *supra* note 144, Roll 159, Frame 921.

184. See To His Excellency the Governor & Congress of the State of Coahuila & Texas (1834?) (petition from Ayuntamiento of Brazoria requesting recognition as official ayuntamiento with signatures of petitioners), *microformed on* Texas as Province & Republic, *supra* note 123, Item 45.

185. See Letter from Ramón Músquiz to Alcalde of the Villa [Town] of Austin (Apr. 18, 1834), *microformed on* Béxar Archives, *supra* note 144, Roll 161, Frame 149 (complaining that many reports were not sent the prior year, and expressing expectation the reports will be sent since a Spanish-speaking secretary had been hired); cf. BARKER, MEXICO & TEXAS, *supra* note 141, at 23 (asserting that ayuntamiento officers who were less punctilious in the observance of official etiquette caused in part by their ignorance of the Spanish language "brought only half-hearted remonstrances from the political chief, which caused no perceptible annoyance").

186. See Letter from Thomas Barnett to Ramón Músquiz (Feb. 1, 1830), in AUSTIN PAPERS, 1828-1834, *supra* note 1, at 329.

187. See *Minutes of the Ayuntamiento of San Felipe de Austin, 1828-1832*, *supra* note 179, at 78 (noting that records after February 1, 1830 were kept by an English speaking secretary); see also *supra* text accompanying note 157 (describing the requirement that ayuntamiento records be maintained in both languages).

reports should be imposed, but stated he stood ready to impose the fine if the Jefe should so decide. No record of a fine exists.¹⁸⁸ Austin later recommended to Anglo-American officials that official correspondence be acknowledged, even if in English.¹⁸⁹

James C. Davis, the secretary for the Ayuntamiento of Gonzáles, apparently followed Austin's suggestion when he wrote the Jefe in April 1834:

In consequence of not being so fortunate as to understand the Spanish Language, I am compelled to address [sic] you in English, which you will excuse, as I have not a translator in this municipality, or I would have done myself the pleasure of writing to you many times before this, and should not have been so remiss in answering your official letters.¹⁹⁰

Davis then asked for permission to have official documents translated by Smith¹⁹¹ at Béxar. Smith continued to translate English-language documents for the Ayuntamiento of Gonzáles,¹⁹² and for other Anglo-American immigrants.¹⁹³ Some of the documents from Gonzáles, however, do not have a Spanish translation.¹⁹⁴

188. See Letter from Stephen F. Austin to Ramón Músquiz (Apr. 3, 1830), in *AUSTIN PAPERS, 1828-1834*, *supra* note 1, at 355-56.

189. See Letter from Stephen F. Austin to Alcalde Luke Lesassier (May 6, 1833), in *AUSTIN PAPERS, 1828-1834*, *supra* note 1, at 961-63.

190. Letter from James C. Davis to Chief of Department of Béxar (Apr. 18, 1834), *microformed on Béxar Archives*, *supra* note 144, Roll 161, Frame 149.

191. "Mr. Smith" was John G. Smith. Like Stephen F. Austin, who often used "Estevan," Mr. Smith often Mexicanized his name, going so far as to sign his last name "Esmith," as "Smith" is pronounced by Spanish-speakers. See Letter from Ezekiel Williams (July 22, 1834) (translated by "Juan G. Esmith, Traductor [Translator]"), *microformed on Béxar Archives*, *supra* note 144, Roll 162, Frame 0634.

192. See Letter from Alcalde James C. Davis (May 2, 1834), *microformed on Béxar Archives*, *supra* note 144, Roll 161, Frame 0358 (acknowledging receipt of laws "and through the translation of Mr. Smith are all understood"); Letter from Alcalde James C. Davis (May 16, 1834), *microformed on Béxar Archives*, *supra* note 144, Roll 161, Frame 0572; Letter from Alcalde James C. Davis (May 17, 1834), *microformed on Béxar Archives*, *supra* note 144, Roll 161, Frame 0583; Letter from Alcalde James C. Davis (May 19, 1834), *microformed on Béxar Archives*, *supra* note 144, Roll 161, Frame 0606; Letters from Alcalde James Davis (May 22, 1834), *microformed on Béxar Archives*, *supra* note 144, Roll 161, Frame 0659 & 0662; Letter from Ezekiel Williams (July 8, 1834), *microformed on Béxar Archives*, *supra* note 144, Roll 162, Frame 0370.

193. William B. Travis, for example, apologized to Colonel Ugartechea for not writing in Castilian because he could not express himself in that language and asked that Smith translate the letter. See Letter from W.B. Travis to Colonel Ugartechea (July 31, 1835), in *AUSTIN PAPERS, 1834-1837*, *supra* note 129, at 95.

194. See Letter from James C. Davis (Apr. 18, 1834), *microformed on Béxar Archives*, *supra* note 144, Roll 161, Frame 152 (nominating four persons to serve as judges); Letter

Mexican law requiring that all land titles be in Spanish was also interpreted liberally by the Anglo-American immigrants.¹⁹⁵ Anglo-American surveyors wrote their field notes in English, and these were then translated into Spanish.¹⁹⁶ While some land titles were only in Spanish,¹⁹⁷ many were bilingual.¹⁹⁸ Land titles for properties within the Anglo-American towns were in English.¹⁹⁹

E. *The First Bilingual Education Laws in Texas*

Austin's contract with the Mexican government required him to "promote the establishment of schools in the Spanish language" in any new towns he established.²⁰⁰ This contract provision was, as one historian has described, as ineffective as the requirement that the immigrants become Catholics.²⁰¹ The Anglo-American immigrants established schools taught only in English.²⁰² Sounding very much like today's English-Only proponents, one Mexican government official complained about the failure of

from James C. Davis (May 2, 1834), *microformed on* Béxar Archives, *supra* note 144, Roll 161, Frame 0360 (advising of Ezekiel Williams' appointment as judge).

195. See *supra* text accompanying note 138.

196. See *Irvin v. Bevil*, 80 Tex. 332, 16 S.W. 21, 22 (1891) (relying on the original English-language field notes to ascertain the boundaries of a grant rather than the erroneous Spanish translation of the notes); see also *Cook v. Dennis*, 61 Tex. 246, 247-48 (1884) (noting that "field notes were made out in the English language, and passed to the commissioner for extending grants; . . . they were translated into the Spanish language, and, as thus translated, were incorporated into the grant.").

197. See, e.g., Juan Antonio Padilla, Comisionado General, por el Supremo Gobierno del Estado de Coahuila y Texas para el repartimiento de tierras vacías del mismo Estado [Juan Antonio Padilla, General Commissioner, by the Supreme Government of Coahuila and Texas, for the distribution of vacant lands of the same State] (1829) (Spanish language land title), *microformed on* Texas as Province & Republic, *supra* note 123, Item 13.

198. See Form of Land Certificate (Aug., 1823), in *AUSTIN PAPERS*, 1789-1824, *supra* note 117, at 691.

199. See *Town of Matagorda Certificate* (Apr. 4, 1831), *microformed on* Texas as Province & Republic, *supra* note 123, Item 18.1 (stating that lot was sold to highest bidder); *Town of Matagorda Certificate* (Apr. 7, 1831), *microformed on* Texas as Province & Republic, *supra* note 123, Item 18.2 (stating that lots were donated).

200. See *supra* text accompanying note 138.

201. See Max Berger, *Education in Texas During the Spanish & Mexican Periods*, 51 Sw. Hist. Q. 41, 49 (1948).

202. The first English-language school in Texas was probably operated by Isaac M. Pennington in 1823-24. See C.E. EVANS, *THE STORY OF TEXAS SCHOOLS* 35 (1955). Thomas J. Garner taught at Nacogdoches in 1825, and T. J. Pilgrim at San Felipe de Austin in 1829, and then at Columbia. See *id.* Henry Smith taught in Brazoria from 1827-1830, while Oyster Creek had a school beginning in 1834. See *id.* at 35-37. The Anglo-American immigrants operated an English school in Nacogdoches in 1828. See BARKER, *MEXICO & TEXAS*, *supra* note 141, at 53 (quoting report by General Manuel Mier y Terán). See also FREDERICK EBY, *THE DEVELOPMENT OF EDUCATION IN TEXAS* 76-78 (1925) (describing Anglo-American schools); Berger, *supra* note 201, at 50-53 (same).

the Anglo-American immigrants to learn the national language: "Texas wants a good establishment for public instruction where the Spanish language may be taught, otherwise the language will be lost. Even at present, English is almost the only language spoken in this section of the republic."²⁰³

Later Mexican law did not explicitly require that schools be taught in Spanish. The Constitution of Coahuila and Texas of 1827 provided for public education "wherein shall be taught reading, writing, arithmetic, the catechism of the Christian religion, a brief and simple explanation of this constitution, and that of the republic, the rights and duties of man in society, and whatever else may conduce the better education of youth."²⁰⁴ A state statute similarly required instruction in "reading, writing, arithmetic, the dogma of the Catholic Religion, and all Ackermann's catechisms of arts and sciences," but did not mandate that these subjects be taught in Spanish.²⁰⁵

By 1828, the Anglo-American immigrants secured the first law requiring bilingual schools in Texas. The state law establishing the Ayuntamiento of San Felipe de Austin provided:

Art. 29 The ayuntamiento, so far as circumstances will permit, shall promote the establishment of a school in the capital of the municipality, for the purpose of teaching the English and Spanish languages, for which purposes they will form a plan and transmit it to the governor, through the regular channel, to be presented to the legislature for approval.²⁰⁶

Although they later charged in the Texas Declaration of Independence that the Mexican government had failed "to establish any system of public education,"²⁰⁷ the Anglo-American immigrants never presented a plan to establish the bilingual school to the state legislature.

203. EBY, *supra* note 202, at 74 (quoting report of Colonel Juan Almonte to the Mexican government in 1834).

204. CONST. OF COAH. & TEX. CONST. of 1827, Title VI, *reprinted in* 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 451 (Austin, Gammel Book Co. 1898).

205. Decree no. 92 (1829) (State of Coahuila and Texas), *reprinted in* 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 237-40 (Austin, Gammel Book Co. 1898). *But see* Decree no. 144 (State of Coahuila and Texas) (1830), *reprinted in* 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 267 (Austin, Gammel Book Co. 1898) (providing that prizes of "Fleuris Castillian grammar, orthography and catechism" be distributed to pupils who excel in "virtue and application").

206. Municipal Ordinance for the Government & Regulation of the Ayuntamiento of Austin (1828), *reprinted in Minutes of the Ayuntamiento of San Felipe de Austin, supra* note 148, at 318.

207. THE DECLARATION OF INDEPENDENCE (Repub. Tex. 1836), *reprinted in* 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 1065 (Austin, Gammel Book Co. 1898)

Stephen F. Austin, the "Father of Texas,"²⁰⁸ believed bilingual education was essential:

[P]ublic schools for the teaching of modern languages, and especially that of Spanish, are of prime importance. These colonies are composed of both foreigners and Mexicans, and the necessity for disseminating [sic] the national language aiming [sic] the former is evident. They themselves are fully convinced of this necessity and have made various efforts to found a school by means of voluntary contributions. Up to this time these efforts have had no successful outcome . . . The general good of the state . . . will be greatly advanced by the establishment of a literary institution - and particularly one whose principal object is the extension of the national language among a portion of the inhabitants of the state who do not know it²⁰⁹

Austin proposed a trilingual Institute of Modern Languages at San Felipe de Austin, "[r]ealizing the importance of encouraging by every possible means, the teaching of the Spanish language in the new colonies of Texas."²¹⁰ Article 5 of the proposal called for a rector who "must be master of the Spanish and English languages."²¹¹ In addition, Article 6 proposed three professors: one of Spanish, one of English, and one of French. Article 7 provided that subjects other than language "shall be distributed among the rector and the professors in the order prescribed by the internal rules of the institution."²¹² There is no evidence that the proposal was ever actually presented to the state Congress; the Institute was never established.²¹³

Although the Mexican government explicitly permitted, through both law and practice, the use of English in the schools of the Anglo-American immigrants, the actions of the Mexican government were perceived in the early twentieth century by the leading historian of Texas education to have been unreasonable:

[T]he restrictions placed by the [Mexican] Constitution upon freedom of teaching and of publication were extremely galling to the Anglo-Americans, who were intensely jealous of their personal rights of speech, the freedom of the press, and religious liberty. It must also be remembered that the laws of the state of Coahuila and

208. EUGENE C. BARKER, *FATHER OF TEXAS* (1935).

209. Mattie Austin Hatcher, *Plan of Stephen F. Austin for an Institute of Modern Languages at San Felipe de Austin*, 12 Q. TEX. ST. HIST. ASS'N 231, 235-39 (1909).

210. *Id.* at 235.

211. *Id.*

212. *Id.*

213. *See id.* at 239.

Texas required all public schools to be conducted in the Spanish language.

In light of these facts the protests of the Texas people were justified.²¹⁴

Professor Eby's assertions about legal restrictions on the teaching of English under Mexican law are incorrect;²¹⁵ his comments are especially ironic since he wrote during a period when the state of Texas had explicitly prohibited the use of any language other than English in both public and private schools.²¹⁶

F. *Requests of the Anglo-American Immigrants for the Expansion of Bilingual Government in Texas*

Despite these remarkably liberal provisions and practices providing access to government for monolingual English-speaking immigrants to a Spanish-speaking country,²¹⁷ Anglo-American immigrants were not satisfied. Austin believed most of his difficulties were caused by the immigrants' ignorance of the Spanish language.²¹⁸ Only two years after securing permission to establish his colony, Austin asked for more multilingualism in government:

214. EBY, *supra* note 202, at 83.

215. Except for the colonization contracts, the only law that required the teaching of Spanish in Texas schools during the Mexican period was enacted in 1833 to provide land for the funding of a school in Nacogdoches. Like the contracts, the statute required that "the Castilian language . . . shall be expressly taught," but it did not prohibit instruction in English. Decree no. 240 (1833) (State of Coahuila and Texas), *reprinted in* 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822-1897*, at 333 (Austin, Gammel Book Co. 1898).

216. *See* TEX. REV. CIV. STAT. art. 2782 (1911) (repealed 1971) (requiring teachers in the Texas public schools to use English exclusively). This requirement was first imposed in 1893. *See* Act approved May 20, 1893, 23d Leg., R.S., ch. 122, § 70, 1893 Tex. Gen. Laws 182, 202-03, *reprinted in* 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822-1897*, at 612, 632-33 (Austin, Gammel Book Co. 1898).

217. *See* Letter from Stephen F. Austin to Archibald Austin (Feb. 24, 1830), *in* AUSTIN PAPERS, 1828-1834, *supra* note 1, at 336 (stating "It is a singular phenomenon [sic] that a colony of *Americans*, almost in the infancy of our country, should be planted on a foreign soil, - there to . . . speak our language . . .").

218. *See* Barker, *Government of Austin's Colony*, *supra* note 155, at 238-39 (noting that Austin attributed much of his difficulty to the colonists' ignorance of the Spanish language); *see also* Letter from Stephen F. Austin to Josiah H. Bell (Mar. 17, 1829), *in* AUSTIN PAPERS, 1828-1834, *supra* note 1, at 187 (attributing unrest among Anglo-Americans about ayuntamiento taxes to ignorance; "this want of knowledge of the laws then I believe to be the true source of all the evils, and it cannot be remedied at this time, for it is impossible to have all the laws translated and printed in the English language"); Letter from Stephen F. Austin to James F. & Emily Perry (Apr. 19, 1833), *in* AUSTIN PAPERS, 1828-1834, *supra* note 1, at 952 (asserting Mexican officers "are generally very polite and gentlemanly men and if they spoke English there would be no difficulty with them").

I have in all cases directed all the colonists to make their Deeds of Conveyance in Spanish as the only legal language, but as not one in a hundred of them understand that language it would afford them a great accommodation [sic] if the Law would permit them to Deed Lands and make all their Written Contracts in the English or French and permit them to be recorded in those Languages.²¹⁹

In 1826, Austin proposed a more expansive bilingual government to Bastrop, who at that time was the Texan deputy in the state Congress. Austin proposed a restructuring of the judicial system that would provide for judicial proceedings in English, which would be translated into Spanish by an official translator.²²⁰ This proposal was finally realized in 1834.²²¹

Austin's requests for more bilingualism in government reflected the desires of the Anglo-American immigrants. The citizens of San Felipe de Austin met on November 15, 1830 to tell their deputies in the state legislature their "wants and necessities;" the third request made to the deputies was the appointment of a translator at the seat of government to translate the laws and decrees; and, the fourth request was to have a translator appointed to the court in the colony.²²² The Anglo-American immigrants of the Texas of the 1820's and 1830's were provided with bi-

219. Memorial to the Legislature (Dec. 22, 1824), in *AUSTIN PAPERS, 1789-1827*, *supra* note 117, at 998. In the draft of his memorial, Austin had requested still more bilingualism:

[A]s they are all unacquainted with the Spanish language, and cannot therefore receive that instruction from the [Catholic] cura who we have been expecting . . . [I request] that honorable and enlightened Body will be pleased to extend to these inhabitants all the indulgence relative to public worship and preaching in the English language, which they may deem consistent with the laws or with the general interests of the nation.

Id. at 1001. The Anglo-American immigrants were required to practice Catholicism in order to enter Texas. See Decree of the Emperor (Feb. 18, 1823), reprinted in 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822-1897*, at 31 (Austin, Gammel Book Co. 1898) (stating that colonists "must accredit that they are roman apostolic catholics"); constitutive Acts of the Mexican Federation, art. 4 (Jan. 21, 1824) ("The religion of the Mexican nation is and shall perpetually remain the Roman Catholic and Apostolic. The nation protects it by just and wise laws, and prohibits the exercise of every other."), *id.* at 61; Constitution of the United Mexican States, art. 3 (Oct. 4, 1824) (using slightly different language to the same effect), *id.* at 73. Austin had previously refused requests to permit English-speaking Protestant ministers to preach in the colony. A note at the end of the draft of his memorial to the legislature states he ultimately deemed the section quoted above "a dangerous subject to touch and therefore not sent." *AUSTIN PAPERS 1789-1827*, *supra* note 117, at 1002.

220. See Barker, *Government of Austin's Colony*, *supra* note 155, at 232.

221. See *infra* Part V.G.

222. See *Minutes of the Ayuntamiento of San Felipe de Austin, 1828-1832*, *supra* note 174, at 72.

lingual governmental services far more extensive than those available in Texas today. They wanted even more.²²³

G. *Demands by the Anglo-American Immigrants for English Translations of Mexican Law*

Mexican law and practice provided the English-speaking Anglo-American immigrants with broad access to the Spanish-language laws of the country. The Mexican government required that each ayuntamiento's secretary be bilingual to permit communication between the Mexican government and the Anglo-American immigrants.²²⁴ The Mexican government published certain decrees in English for the benefit of the Anglo-American immigrants.²²⁵ Stephen F. Austin maintained manuscript translations of all the Mexican laws in his office, and made them available

223. See *infra* Parts V.B & V.C (describing the demands for greater bilingualism by the Conventions of 1832 and 1833).

224. See *supra* text accompanying notes 144-46.

225. See *Puede desembarcar el extranjero* [sic] [The foreigner may disembark] (Jan. 12, 1831) (regulations for passports in Spanish, English, and French), *microformed on Texas as Province & Republic*, *supra* note 123, Item 733; Provisional Regulations for the Surveying of Vacant Lands . . . A.D. 1829 (Dec. 21, 1829) (printed in Spanish & English), *microformed on Texas as Province & Republic*, *supra* note 123, Item 15; *Alcance al Num. 25 del Noticioso del Puerto de Matamoras* (May 23, 1831) (newspaper extra in Spanish and English containing decrees on slavery and on division of Department of Béxar into two departments), *microformed on Texas as Province and Republic*, *supra* note 123, Item 40; *Notice that empresarios cannot sell the lands received by them as premiums until they are naturalized citizens of the Mexican Republic* (Jan. 12, 1831) (published in Spanish and English in NOTICIOSO DEL PUERTO DE MATAMOROS), *microformed on Texas as Province & Republic*, *supra* note 123, Item 763; Milam's Colony (1834) (notice from land commissioner containing translations of state laws relating to securing land titles), *microformed on Texas as Province & Republic*, *supra* note 123, Item 52; see also Decree no. 277 (1934) (State of Coahuila and Texas) art. 140, *reprinted in* 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 364, 380 (Austin, Gammel Book Co. 1898) (providing for translation and publication of decree establishing bilingual court system); Decree No. 308 of the Congreso constitucional [Constitutional Congress], authorizing Samuel Williams to establish a bank (Apr. 30, 1835) (published in English by state legislature), *microformed on Texas as Province & Republic*, *supra* note 123, Item 822A.

to the immigrants.²²⁶ The ayuntamientos regularly ordered the translation and printing of Mexican laws.²²⁷

Nonetheless, the Anglo-American immigrants demanded more translations of the Mexican laws.²²⁸ Stephen F. Austin explained the critical importance of translating the laws for persons who do not speak the language of government:

I have dedicated myself in union with Don Samuel [Williams] to the burdensome work of preparing legitimate translations of the constitutions, national and of the state and of the decrees of the Legislature with the goal of printing them in a notebook, and part of them in the [gazette:] this can seem like work of little consideration, but it is not—the work is great [and] there is nothing more necessary and important for the good of Texas, because *most of these inhabitants do not understand a word of Castilian and it is entirely impossible to govern a people with laws whose existence most of them ignore absolutely*—All of the difficulties of Nacogdoches have proceeded entirely from the lack of [translations] of the laws, and of gefes [sic] there to administer the local [government] with the necessary prudence and effect [in a] frontier town and one mixed with so many languages and customs—I have not found a single individual of wis-

226. See Letter from Stephen F. Austin to J.H. Bell (Apr. 4, 1829), in AUSTIN PAPERS, 1828-1834, *supra* note 1, at 204 (noting that the "laws cannot be published in print so that every man will have a copy of them, and there is no other way but for the people to come and read the manuscript translations that are in the office, or to have confidence in some one"); LAWS, ORDERS & CONTRACTS ON COLONIZATION (Nov. 1, 1829), *supra* note 120, at 3 (noting that manuscript translations of colonization laws were available in Austin's office); Letter from Stephen F. Austin to Lucas Alamán (Sept. 20, 1830), in AUSTIN PAPERS, 1828-1834, *supra* note 1, at 490 (enclosing English translations of Mexican colonization laws).

227. See *Minutes of the Ayuntamiento de San Felipe de Austin, 1828-1832*, *supra* note 179, at 83 (ordering on February 2, 1830 that a "trust-worthy discreet and confidential person" be employed to translate laws relative to judicial proceedings and that the translation be published); *Minutes of the Ayuntamiento de San Felipe de Austin, 1828-1832*, *supra* note 174, at 220-21 (ordering in 1830 the translation of Law No. 104 and the printing of 100 copies of that law and of Law No. 39).

228. See Memorial to the Legislature (Dec. 22, 1824), in AUSTIN PAPERS, 1789-1827, *supra* note 117, at 1000 ("[W]e have not received the Laws and are unable to procure them with translations"); Letter from Matthew G. White to Stephen F. Austin (Jan. 3, 1830), in AUSTIN PAPERS, 1828-1834, *supra* note 1, at 316 (asking Austin the duties and powers of the Alcalde since he is "totally [sic] destitute of the laws of the Republic"); TEXAS GAZETTE, Aug. 29, 1830 (complaining that "in the United States, laws are published in a newspaper everyone can read, while in Texas they are sent to an alcalde who buries them in an unknown language in the archives"), cited in LOWRIE, *supra* note 126, at 122; Circular-Call for a Convention (Nov. 20, 1832), in AUSTIN PAPERS, 1828-1834, *supra* note 1, at 892 (asserting that the laws "are locked up in a language known to a few only, and, therefore, for all practical purposes, utterly beyond our reach").

dom who is well informed about the national and state constitutions [and] of the laws who does not express himself entirely satisfied with them, and this is enough to prove the importance of the translations.²²⁹

The *Texas Gazette*, an English-language newspaper published in San Felipe de Austin,²³⁰ agreed with Austin that the immigrants' complaints about the Mexican judicial system stemmed from ignorance about the law because of the language barrier: "Hence emanate disgust and discontent with a system they can not understand, whose beauties they are unable to appreciate; and they attribute those evils to the law, which originated only from the want of a strict and scrupulous adherence to its provisions."²³¹

One group of immigrants related to the editor of the *Texas Gazette* their understanding that a translation of the Mexican laws had not been printed because it would require suspension of the publication of the newspaper. The group expressed its preference for suspension, "for it is evident that much more general and public good will result from the publication of the Colonization Laws, than from the three or four numbers of the Gazette, whose publication would be suspended."²³² The newspaper was stopped for ten weeks while Austin's translation of the Spanish and Mexican colonization laws governing the immigrants was printed.²³³

229. See Letter from Stephen F. Austin to José Antonio Navarro (Oct. 19, 1829) (translated by author from Spanish) (emphasis added), in AUSTIN PAPERS, 1828-1834, *supra* note 1, at 271; see also THOMAS JEFFERSON CHAMBERS, PROSPECTUS FOR TRANSLATING INTO ENGLISH & PUBLISHING A COMPILATION OF THE LAWS IN FORCE IN THE STATE OF COAHUILA & TEXAS 1 (1832), *microformed on Texas as Province & Republic*, *supra* note 123, Item 27 (noting "the confusion and uncertainty which prevail in the administration of justice, emanating from the impossibility of reaching the laws which are locked up in a language understood by a few adepts only . . .").

230. The *Texas Gazette* was one of several English-language newspapers published by the Anglo-American immigrants. The *Texas Gazette* played an important role for the Anglo-American immigrants by publishing translations of the Mexican laws and of correspondence from Mexican officials. See Eugene C. Barker, *Notes on Early Texas Newspapers, 1819-1836*, 21 SW. HIST. Q. 127, 134-35 (1917).

The first newspaper published in Texas, the *Gaceta de Texas*, was printed in Spanish in May, 1813 at Natchitoches. See THOMAS W. STREETER, BIBLIOGRAPHY OF TEXAS, 1795-1845, at 1. The following month, the first Texas newspaper published in English and Spanish, *El Mexicano*, was printed at Natchitoches. See *id.* The *Mexican Advocate*, a weekly paper, was printed at Nacogdoches in Spanish and English in 1829. See *id.* at 198; Barker, *Notes on Early Texas Newspapers, 1819-1836*, *supra*, at 129.

231. TEXAS GAZETTE, Feb. 18, 1832, quoted in LOWRIE, *supra* note 126, at 122-23.

232. TEXAS GAZETTE, Nov. 7, 1829, quoted in LOWRIE, *supra* note 126, at 121.

233. See STEPHEN F. AUSTIN, TRANSLATION OF THE LAWS, ORDERS, & CONTRACTS, ON COLONIZATION, FROM JANUARY, 1821, UP TO THIS TIME, IN VIRTUE OF WHICH COL. STEPHEN F. AUSTIN, HAS INTRODUCED AND SETTLED FOREIGN EMIGRANTS IN TEXAS, WITH

Other state laws,²³⁴ as well as the municipal ordinance for the government of the Ayuntamiento of San Felipe de Austin,²³⁵ were also translated and published. Complaints were soon heard that the translation was not entirely reliable, and the editor of the *Texas Gazette* proposed asking the state government to have official translations of laws made as they were promulgated.²³⁶ The *Gazette* continued to print translations of Mexican laws.²³⁷ Austin also continued to press for the translation of all of the laws of Coahuila and Texas.²³⁸ One of the few Anglo-American lawyers who spoke Spanish, Thomas Jefferson Chambers, proposed in 1832 to publish a translation of all state laws, but it does not appear he ever did so.²³⁹

In 1835, the state legislature responded to the demands of the Anglo-American immigrants by providing for the publication of all laws, decrees, and orders in Spanish and English.²⁴⁰ For the Anglo-American immigrants, this was not enough, for less than a year later they claimed

AN EXPLANATORY INTRODUCTION (1829). This is the first book over 12 pages long printed in Texas. See STREETER, *supra* note 230, at 43. The original text is microformed on Texas as Province & Republic, *supra* note 123, Item 12. The text is also available in 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822-1897*, at 3-58 (Austin, Gammel Book Co. 1898). See also *LAWS, PASSED BY THE LEGISLATURE OF THE STATE OF COAHUILA AND TEXAS (1829)* (published by private printer G.B. Cotten), *microformed on Texas as Province & Republic*, *supra* note 123, Item 16.

234. See STREETER, *supra* note 230, at 241 (describing publication of *Reglamento para el Gobierno Económico Político del Estado Libre de Coahuila y Tejas* [Regulation for the Economic & Political Government of the Free State of Coahuila and Texas] in the October 31, 1829 issue of *Texas Gazette*); *id.* at 244 (describing publication of *Reglamento de la Milicia Nacional Local, del Mismo Estado* [Regulation of the Local National Militia of the Same State] in *Texas Gazette*); *id.* at 44 (describing publication of translation of laws passed by the legislature of Coahuila and Texas in issues 1 through 5 of the *Texas Gazette*, from September 25, 1829 to October 31, 1829).

235. See Translation of Decree No. 100 (1829) (municipal ordinance for government of Ayuntamiento of San Felipe de Austin), *microformed on Texas as Province & Republic*, *supra* note 123, Item 17; STREETER, *supra* note 230, at 45 (describing publication of translation of decree No. 100 in Oct. 31, 1829 issue of *TEXAS GAZETTE*).

236. *TEXAS GAZETTE*, Mar. 13, 1830 & Mar. 20, 1830, *cited in* LOWRIE, *supra* note 126, at 121-22.

237. See Stephen F. Austin, *Editorial*, *TEXAS GAZETTE*, July 3, 1830, *in* AUSTIN PAPERS, 1828-1834, *supra* note 1, at 437 (noting publication of translation of law of Apr. 6, 1830 and of official letter of General Manuel de Mier y Terán interpreting this law).

238. See Stephen F. Austin, *Editorial*, *TEXAS GAZETTE*, Mar. 20, 1830, *described in* AUSTIN PAPERS, 1828-1834, *supra* note 1, at 347 (urging translation of the laws of Coahuila and Texas).

239. See CHAMBERS, PROSPECTUS FOR TRANSLATING INTO ENGLISH & PUBLISHING A COMPILATION OF THE LAWS IN FORCE IN THE STATE OF COAHUILA & TEXAS, *supra* note 229; STREETER, *supra* note 230, at 47 (stating there is no record of publication).

240. See Decree no. 319 (1835) (State of Coahuila and Texas), *reprinted in* 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822-1897*, at 417 (Austin, Gammel Book Co. 1898) (grant-

independence from Mexico based in part on the conduct of government by Mexico "in an unknown tongue."²⁴¹

H. *Requests by the Anglo-American Immigrants for a Separate Department to Operate in English*

As the difficulties created by the inability of the immigrants to speak Spanish grew, Stephen F. Austin proposed various structural changes to facilitate communication with the government. Initially, in 1826, Austin proposed the appointment of a sub-political chief who "should understand English and Spanish and be a medium of communication between the political chief and the *alcaldes*."²⁴²

Two years later, Austin proposed the division of the Department of Béxar into at least two *partidos* or districts. In support of this proposal, Austin noted:

The eastern part of the department is populated with new colonies whose populations in general do not understand the Castilian language, nor are they accustomed to the laws and customs of the country because, having recently arrived, they have not had time to accustom themselves to them . . . For these reasons the presence of a Gefe [sic] is needed to organize the new populators, install their *ayuntamientos*, translate the laws and instruct them in these [N]ot one tenth of them understand the language nor the necessary forms, and if there is no other recourse but to go to the Gefe [sic] of the Department at Béxar we will experience infinite difficulties in the confusion of languages.²⁴³

Austin then suggested that if funds were not available for two Jefes, then funds should be provided to increase the salary of the one Jefe and provide him with sufficient funds to pay translators and scribes "because the same necessity requires that all the laws and orders of the Government be published [in East Texas] in both languages, and therefore the Gefe [sic] of the division would have the task of making the translations and making the copies necessary for each *Alcalde* and each *Ayuntamiento*"²⁴⁴ Austin concluded by noting that, "These reflections emanate from an ardent desire to see my country [i.e. Mexico] flower"²⁴⁵

ing license for publication of all laws, decrees, and orders in Castilian and English and requiring delivery of 200 copies for use of state authorities).

241. See *infra* Part V.J.

242. Barker, *Government of Austin's Colony*, *supra* note 155, at 232.

243. Letter from Stephen F. Austin to Governor José María Viesca (Sept. 8, 1828?), in AUSTIN PAPERS, 1828-1834, *supra* note 1, at 102-04 (translated by author from Spanish).

244. *Id.* at 104.

245. *Id.*

The Mexican government responded to these entreaties in 1831, when the Department of Béxar was divided into two departments, Béxar and Nacogdoches.²⁴⁶ In 1834, the Department of Béxar was divided yet again into the Departments of Béxar and Brazos.²⁴⁷ In establishing these new departments, the Mexican government attempted yet again to provide the Anglo-Americans with a government that could communicate with them in their own language.²⁴⁸ For the Anglo-American immigrants, however, the bilingual services provided by the Mexican government were not sufficient.

V. LANGUAGE RIGHTS AND THE STRUGGLE FOR INDEPENDENCE FROM MEXICO

Although the Anglo-American immigrants expected to operate their local government in their own language, they initially felt their lack of fluency in Spanish prevented them from taking an active role in national Mexican politics. Jorge Fisher, a secretary for the Ayuntamiento of San Felipe de Austin, was fired shortly after he was hired in 1830. The Minutes of the Ayuntamiento explain:

And since he has been acting as secretary to this body he has endeavored to take advantage of their total ignorance of the Spanish language . . . as adopted citizens they owed obedience to the Constitution and Laws, and that as such adopted citizens and unacquainted with the Castillian [sic] Language they could not prudently enter into political questions which they cannot understand having their origin at remote distances and being in a language different from their own, and one they are totally unacquainted with.²⁴⁹

The immigrants' reticence towards involvement in national issues because of their lack of fluency in the national language would soon change.

246. See Decree no. 164 (1831) (State of Coahuila and Texas), reprinted in 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822-1897*, at 281 (Austin, Gammel Book Co. 1898).

247. See Decree no. 270, arts. 1, 3, & 4 (1834) (State of Coahuila and Texas), reprinted in 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822-1897*, at 355 (Austin, Gammel Book Co. 1898).

248. See *infra* text accompanying note 296 (describing the establishment of Castilian and English as official languages in the Department of Brazos).

249. *Minutes of the Ayuntamiento of San Felipe de Austin, 1828-1832*, *supra* note 179, at 275-76.

A. *The Multiple Causes of Independence*

The reasons that led some²⁵⁰ of the Anglo-American immigrants and native Tejanos to declare their independence from Mexico were many and varied. Among the reasons cited in the Texas Declaration of Independence²⁵¹ were military abuses,²⁵² inadequacies in the Mexican justice system,²⁵³ the failure of the Mexican Republic to abide by the federalist

250. See Patricia V. Barrios, *Battle Over Alamo Roles of Ethnic Groups Continues*, SAN ANTONIO EXPRESS-NEWS, June 26, 1994, at B7 (quoting historian Gilberto Hinojosa as noting that many Anglo American immigrants refused to take sides during the Texas Revolution, and quoting historian Stephen L. Hardin as noting that some Tejanos rallied to the centralist banner); see also Letter from Edward Gritten to Colonel Ugartechea (July 5, 1835) (translated by author from Spanish), in AUSTIN PAPERS, 1834-1837, *supra* note 129, at 80 (asserting in Spanish that Gonz  les and Mina wish "to live in tranquility and in peace with their brothers the Mexicans, with whom in no way do they want to have a war . . ."); BARKER, MEXICO & TEXAS, *supra* note 141, at 149-63 (describing affirmations of loyalty to Mexico by Anglo-American immigrants prior to August, 1835).

251. One writer has claimed that the Texas Declaration of Independence was "lifted wholesale from the U.S. Declaration of Independence and endowed with as many complaints as could be invented overnight." JEFF LONG, DUEL OF EAGLES 208 (1990), *quoted in* Paul & Van Horn, *supra* note 24, at 941. A discussion of the validity of this accusation is beyond the scope of this Article. If the courts were to accept this claim, the result would be to delete the Texas Bill of Rights from the Texas Constitution because the framers could not have intended to actually remedy any grievances. For purposes of my analysis, I use the historical narrative used by the Texas courts: the delegates to the 1836 Convention had specific grievances which they intended to remedy by crafting a Declaration of Rights which protects Texans today as the Texas Bill of Rights. See Robert M. Cover, *Nomos as Narrative*, 97 HARV. L. REV. 4, 4 (1983) (stating "no set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning. For every constitution there is an epic . . . Once understood in the context of the narratives that give it meaning, law becomes not merely a system of rules to be observed, but a world in which we live.").

252. The Texas Declaration of Independence accused the Mexican government of "suffer[ing] the military commandants, stationed among us, to exercise arbitrary acts of oppression and tyranny, thus trampling upon the most sacred rights of the citizen, and rendering the military superior to the civil power." THE DECLARATION OF INDEPENDENCE (Repub. Tex. 1936), *reprinted in* 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 1063 (Austin, Gammel Book Co. 1898). Complaints of abuse by the Mexican military were made bilingually in the Bexar Remonstrance. See *infra* text accompanying note 289.

253. The Texas Declaration of Independence alleged that the Mexican government had "ceased to protect the lives, liberty, and property of the people, from whom its legitimate powers are derived, and for the advancement of whose happiness it was instituted . . ." THE DECLARATION OF INDEPENDENCE (Repub. Tex. 1936), *reprinted in* 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 1063 (Austin, Gammel Book Co. 1898). The Declaration also complained that the Mexican government had "failed and refused to secure, on a firm basis, the right of trial by jury, that palladium of civil liberty, and only safe guarantee for the life, liberty, and property of the citizen." *Id.*; see also BARKER, MEXICO & TEXAS, *supra* note 141, at 91 (asserting that "[o]f all the grievances suffered by the colonists the defective judiciary system was . . . the most exasperating and persistent").

guarantees of the Mexican Constitution of 1824,²⁵⁴ and the failure of the Mexican government to make Texas its own separate state.²⁵⁵ Other reasons not cited by the Texans included a desire to protect their purported "right" to own slaves,²⁵⁶ and Manifest Destiny, the belief held by many Americans in the nineteenth century that the United States was destined to extend from the Atlantic Ocean to the Pacific Ocean.²⁵⁷ Others have

254. The Texas Declaration of Independence noted that

the Federal Republican Constitution of their country, which they have sworn to support, no longer has a substantial existence, and the whole nature of their government has been forcibly changed, without their consent, from a restricted federative republic, composed of sovereign States, to a consolidated central military despotism . . .

THE DECLARATION OF INDEPENDENCE (Repub. Tex. 1836), *reprinted in* 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 1063 (Austin, Gammel Book Co. 1898). *See* DAVID MONTEJANO, ANGLOS & MEXICANS IN THE MAKING OF TEXAS 1836-1986, at 26 (1987) (noting that the rebellion initially "appeared to be another provincial revolt of liberal federalists against the conservative constitutionalists led by Santa Anna, a struggle similar to others then occurring throughout Mexico").

255. The Texas Declaration of Independence charged that the Mexican government "hath sacrificed our welfare to the State of Coahuila . . . notwithstanding we have petitioned in the humblest terms for the establishment of a separate State government . . ." THE DECLARATION OF INDEPENDENCE (Repub. Tex. 1836), *reprinted in* 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 1063 (Austin, Gammel Book Co. 1898). *See* T.R. FEHRENBACH, FIRE & BLOOD 379 (1973) (asserting the Anglo-American immigrants had "only two major irritations. Mexico had no trial by jury, which offended the colonists' sense of justice, and justice and government were administered out of Coahuila."). Paul & Van Horn, in arguing that the Texas Bill of Rights provides exactly the same protections as the United States Constitution, emphasize that Fehrenbach suggests the Anglo-American immigrants "were basically happy living under the Mexican Constitution at that time, and that Austin had in general succeeded in overcoming whatever irritants existed." Paul & Van Horn, *supra* note 24, at 964. It is fascinating to observe two Anglo prosecutors adopt the perspectives held by many Mexicans and Chicanos regarding the Texas Revolution to support a restrictive view of the rights guaranteed by the Texas Bill of Rights. *See infra* text accompanying note 257 (noting Manifest Destiny as one explanation for Texas independence); RODOLFO ACUÑA, OCCUPIED AMERICA: A HISTORY OF CHICANOS 5 (3d ed. 1988) (asserting that "North Americans fought the Texas War - that is U.S. dollars financed it, U.S. arms were used on Mexican soil, and Euroamericans almost exclusively profited from it . . . The so-called Republic held Texas in trusteeship until 1844, when the United States annexed it."). This, however, is not the historical narrative used by the Texas courts. *See supra* note 251.

256. The Constitution of the State of Coahuila and Texas adopted on Mar. 11, 1827 declared that no one should be born a slave, and provided that the introduction of slaves was strictly prohibited six months after its adoption. *See* COAH. & TEX. CONST. of 1827, Introduction, *reprinted in* 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 451 (Austin, Gammel Book Co. 1898). *But see* BARKER, MEXICO & TEXAS, *supra* note 141, at 62 (concluding that slavery was not an active cause in precipitating the revolution).

257. *See* MONTEJANO, *supra* note 254, at 24 (describing Texas independence and subsequent annexation as "essentially the reflection of a 'manifest destiny'"); *see also* COAH. & TEX. CONST. of 1827, Introduction, *reprinted in* 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 451 (Austin, Gammel Book Co. 1898) (noting that the Constitution of the

attributed the break as caused by "differences in folkways and mores, in the culture patterns of the two groups."²⁵⁸ Like most historical phenomena, there is no singular cause or explanation for why a group of immigrants who had entered a foreign country less than fifteen years before felt compelled to declare their independence.²⁵⁹ In the rush to consider other explanations, however, the role that language played in this effort has been minimized.²⁶⁰ That role is described in the remainder of Part V, below. If the Texas courts seek to give effect to the intent of the framers of the Texas Constitution,²⁶¹ then their intent with respect to language must be considered.

Before proceeding, the limits of my argument should be noted. I do not claim that language discrimination was the principal motive leading the Texians to declare their independence from Mexico. Given the interplay among Texians and Tejanos, and the wide variety of motivations among the players, any attempt to identify one motive as *the* motive is ludicrous.²⁶² Nonetheless, Mexico's failure to provide even greater access to government in the English language did play a significant role in moti-

Republic of Texas "guarded the rights of the people in the vacant lands of the new Republic, which had constituted the attraction to the immigrants who then occupied the country and were now about to enter on a weary contest for the preservation of their rights therein"). Cf. BARKER, *MEXICO & TEXAS*, *supra* note 141, at v (concluding that the Texian revolution "was neither the culmination of a deep-laid program of chicanery and greed nor the glorious response of outraged freemen to calculated oppression of tyrants"); LOWRIE, *supra* note 126, at 7-8 (describing "writers of an earlier date who looked upon the Anglo-American movement to Texas as a conspiracy to seize the territory from Mexico").

258. LOWRIE, *supra* note 126, at 179.

259. See BARKER, *MEXICO & TEXAS*, *supra* note 141, at 143 (stating that the "causes of popular movements are rarely concrete and simple; on the contrary, they are diffuse and complex"); *id.* at 29-31 (attributing the causes of the revolution to a variety of factors including the absence of contacts to bring two peoples who differed in "language, religion, and civilization" closer together); *id.* at 146 (concluding the "Texas revolution was the product of the racial and political inheritances of the two peoples").

260. See LOWRIE, *supra* note 126, at 125 (stating that the language barrier "was not the spectacular kind to be given as a ground for revolt, though it is alluded to in the Declaration of Independence, but it was a steadily operative influence in the development of misunderstanding and antagonism"). But see COAH & TEX. CONST. of 1827, Introduction, reprinted in 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822-1897*, at 451 (Austin, Gammel Book Co. 1898) ("The laws were published in the Mexican [sic] language, with which but few of the inhabitants of Texas were familiar, and the interests of the two states were so diverse as necessarily to produce jealousy and ill-feeling between their people").

261. See *supra* Part II.B.

262. Cf. Halbrook, *supra* note 100, at 633-40 (describing the cause of independence from Mexico solely in terms of the right to bear arms). Halbrook's assertion that the "independence of Texas became inevitable when Mexican authorities attempted to deprive the settlers of [the] right [to bear arms]," *id.* at 634, weakens, rather than strengthens, his argument for anyone familiar with the complex history of Texas during this period. See also Amy Johnson, *Abortion, Personhood, & Privacy in Texas*, 68 TEX. L. REV. 1521, 1537

vating many Anglo-American immigrants to seek independence from Mexico. Notwithstanding the fact that these Anglo-Americans were recent immigrants to a foreign country, they believed they had a fundamental right of access to governmental services in a language they could understand.

B. *The Convention of 1832*

This belief was manifested prior to any attempt to declare independence from Mexico. In 1832, the Texians pledged their support to Antonio López de Santa Anna in his struggle for the presidency of Mexico. In return for this pledge of support, the immigrants decided to ask for reforms.²⁶³ At a convention held at San Felipe de Austin in October 1832, a committee was appointed to petition the state government "to pass a law authorizing the people of Texas (whose native language is English) to have all their transactions, and obligations, written in the English language, except those which have an immediate connection with Government."²⁶⁴ Two days later, the Anglo-American immigrants requested bilingual education:

[Y]our memorialists pray a grant of as many leagues of land, for the promotion of education, as the Legislature, in its liberality, shall think proper to bestow; to be made to Texas as the foundation of a fund for the future encouragement of Primary Schools, in Texas, in which will be taught the Castilian and English Languages²⁶⁵

The proposal authorizing government in English was ultimately rejected by the Convention.²⁶⁶ Instead, the Convention sought to organize a state government separate from Coahuila.²⁶⁷ This attempt was the first of several to establish Texas as a state separate from Coahuila; one of the reasons the immigrants sought a separate state government was to obtain more multilingual governmental services.²⁶⁸ Ultimately, none of the Convention's proposals were ever presented to the Mexican government.²⁶⁹

(1990) (noting that "so often, advocates who use the historical methodology distort legislative history to lend credence to their individual opinion on the issue").

263. See I HANDBOOK OF TEXAS, *supra* note 113, at 404.

264. PROCEEDINGS OF THE GENERAL CONVENTION OF DELEGATES REPRESENTING THE CITIZENS & INHABITANTS OF TEXAS (Oct. 3, 1832), reprinted in 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 485 (Austin, Gammel Book Co. 1898).

265. *Id.* at 493 (Oct. 5, 1832).

266. See *id.* at 503 (Oct. 6, 1832). The *Proceedings* do not provide any explanation of why the committee's report was rejected.

267. See *id.* (Oct. 5, 1832).

268. See *infra* Part V.D.

269. See I HANDBOOK OF TEXAS, *supra* note 113, at 404.

C. *The Convention of 1833*

Dissatisfied with the outcome of the 1832 Convention, some of the Anglo-American immigrants soon called for another convention. The circular calling for the convention at San Felipe de Austin asserted a right of access to the Mexican justice system in English:

The laws which ought to be enforced [sic], if any such there be, are locked up in a language known to a few only, and, therefore, for all practical purposes, utterly beyond our reach.

....

... The accurate observer, on taking a survey of our situation, must pronounce the decisive opinion, that we are without *remedy* for wrongs; that we are without *redress* for grievances; and that we must remain without them, until they are provided by the deliberate, and *declared will* of a majority of the people, assembled by delegation, in Public Convention.²⁷⁰

Stephen F. Austin prepared an address for the Central Committee which was presented to the convention in April 1833. Austin began by noting the fundamental right of the Anglo-American immigrants to present their petitions to the government:

The people of Texas ought therefore to rely with confidence on the government for protection, and to expect that an adequate remedy will be applied to the many evils that are afflicting them.

[T]he *right* of the people of Texas to represent their wants to the government, and to explain in a respectfull [sic] manner the remedies that will relieve them cannot therefore be doubted or questioned. It is not merely a right, it is also a sacred and bounden duty which they owe to themselves and to the whole Mexican nation²⁷¹

One could conclude from Austin's remarks that if individuals have a fundamental right to address the government, that right is meaningless if they do not have access to the government in a language they speak.²⁷² But reliance on implication for an understanding of the role of language at the 1833 Convention is unnecessary, for the participants explicitly

270. Circular-Call for a Convention (Nov. 13, 1832), in AUSTIN PAPERS, 1828-1834, *supra* note 1, at 892-93.

271. Stephen F. Austin, Address of Central Committee to the Convention of Apr. 1, 1833, in AUSTIN PAPERS, 1828-1834, *supra* note 1, at 935-36.

272. Cf. Robert E. Hall, *Remonstrance-Citizen's Weapon Against Government's Indifference*, 68 TEX. L. REV. 1409, 1415 (1990) (describing Austin's address to the colonists convention at San Felipe de Austin on Apr. 1, 1833 announcing Texans have a right to direct communication with the government).

stated the importance of communication with the government in their own language:

The unnatural annexation of what was formerly the province of Texas to Coahuila by the constituent congress of the Mexican nation, has forced upon the people of Texas *a system of laws which they do not understand*

[T]here are but a few men in Texas who are qualified to prepare cases for the supreme court

[T]he rights of the accused are committed to an *alcalde* who is ignorant of the formulas of the laws, and of the language in which they are written who prepares the cause for the judgment of the supreme tribunal in Saltillo, thus the lives, liberty and honor of the accused are suspended upon the tardy decision [sic] of a distant tribunal which knows not nor cares not for his suffering, and the rights of the community to bring offenders to speedy and exemplary punishment are sacrificed to forms equally uncertain and unknown A total disregard of the laws has become so prevalent, both amongst the officers of justice, and the people at large, that reverence for laws or for those who administer them has almost entirely [sic] disappeared and contempt is fast assuming its place, so that the protection of our property [,] our persons and lives is circumscribed almost exclusively to the moral honesty or virtue of our neighbor.

. . . .

. . . [N]o organization can be devised under the constitution of the State of Coahuila and Texas that would suit the two extremes, separated as they are more than 400 leagues, a great part through a wilderness that cannot be passed without imminent danger from hostile Indians[.] *The dissimilarity of habits* [,] *occupation and language also present still greater difficulties than the distance*. These difficulties are hard to reconcile for the reason that the state constitution requires that all general laws shall be the same throughout the whole state[.]²⁷³

The Texians in 1833 did not yet seek independence; they claimed they wished to remain a part of the Mexican nation. But they also claimed the fundamental right to communicate with their government in their own language.

273. Stephen F. Austin, Address of Central Committee to the Convention of Apr. 1, 1833, in AUSTIN PAPERS, 1828-1834, *supra* note 1, at 937-39 (emphasis added).

D. *Language Rights As a Factor in the Attempt to Make Texas a Separate State of Mexico*

The failure of the Mexican government to make Texas a state separate from Coahuila is commonly identified as a grievance that motivated the Texians to declare independence from Mexico.²⁷⁴ What is commonly overlooked in the discussion of this factor is the role that language played in the demand for a separate state. Austin's address to the 1833 Convention described one of the reasons the Anglo-American immigrants sought to make Texas a separate state: it would ensure that the immigrants would be provided with governmental services in a language they understood. The participants at the Convention of April 1, 1833 explicitly stated that their complaints about being linked to Coahuila did not center solely on the distance between the population centers of the two states. Rather, differences of habits, occupation, and *language* were greater difficulties than the distance.²⁷⁵

The Anglo-American immigrants were circumspect when asserting this right before the Mexican government. The 1833 Convention presented a petition to the Mexican Congress requesting that Texas be made a separate state which was less explicit about the language problem, but implicitly identified language as a part of the problem:

The honorable Congress need not be informed that a large portion of the population of Texas is of foreign origin . . . [T]he best mode of securing the permanent attachment of such a population is to incorporate them into the federal system, on such equitable terms as will redress every grievance, remove every cause of complaint, and insure, not only an identity of interests, but an eventual blending and assimilation of all that is now foreign and incongruous.²⁷⁶

Similarly, an explanation prepared by Stephen F. Austin for the Mexican Minister of Relations was oblique in its presentation of the problem:

4th. The glory of the federal system consists in the fact that no other form of government invented by the wisdom of men, has been able to meet the *local necessities of each angle of an immense country*, and at the same time to unite the physical and moral force of all parts in a

274. See, e.g., FEHRENBACH, *supra* note 255, at 379 (describing the administration of justice and government out of Coahuila as one of two major irritants to the Anglo-American immigrants).

275. See *supra* text accompanying note 273.

276. Memorial of the Texan Convention of April, 1833, to the General Congress of the United Mexican States (1833), reprinted in YOAKUM, *supra* note 139, at 480-81.

national center in order to work in mass, in defense of their liberty and independence.²⁷⁷

A petition to the Mexican Congress requesting Stephen F. Austin's release from prison, written after the enactment of the more generous multilingual provisions described below, was similarly oblique. The petition noted that the people of Texas had "feelings, views, habits and pursuits entirely different and distinct from the people of Coahuila."²⁷⁸

Among themselves, however, the Anglo-American immigrants were very explicit about their claimed right to government in their own language. About the time the Convention of 1833 was meeting, Thomas Jefferson Chambers expressed views similar to those articulated by Stephen F. Austin:

Many important laws have been undivulged as a snare to the people: and although a large majority of the inhabitants of Texas do not understand the language in which the laws are written, they never have been furnished with a translation of them, or been provided with interpreters

With but one superior tribunal of justice, and one assessor general, both located at the capital of the state, at an immense distance from Texas, a large majority of whose inhabitants are ignorant of the language, it has left them without a remedy for the injustice done them by the inferior judges.²⁷⁹

When the Ayuntamiento of Brazoria asked other Anglo-American ayuntamientos for their views on the issue of statehood for Texas in January 1834, the letter noted: "[W]e believe that legislators arising out of the bosom of the people, *having a common language*, common wants, and common interests, would be much more likely to understand and provide

277. Letter from Stephen F. Austin to Minister of Relations (Aug. 1, 1833), in AUSTIN PAPERS, 1828-1834, *supra* note 1, at 994 (emphasis added).

278. Petition from Ayuntamiento of Brazoria to Congress (July [31?], 1834), in AUSTIN PAPERS, 1828-1834, *supra* note 1, at 1070.

279. Thomas Jefferson Chambers, Exposition of the Part Taken by T. J. Chambers in the Difficulties of Texas in the Summer of the Past Year; and His Views upon the Present Most Interesting Measure of Separating Texas from Coahuila & Making It a State (Apr. 1833), *microformed on Texas as Province & Republic*, *supra* note 123, Item 39. Chambers became *asesor general* (state attorney) in February 1834 and helped frame the judicial code establishing a bilingual court system for Texas, described *infra* text accompanying notes 297-301. Chambers was appointed superior judge of Texas under that bilingual court system, but never assumed the duties of that office. See I HANDBOOK OF TEXAS, *supra* note 113, at 326.

for our political necessities, than legislators a thousand miles distant, without any of the above named prerequisites."²⁸⁰

The Texas Declaration of Independence asserted that the failure of the Mexican government to establish Texas as a separate state had deprived the Texians of their right to government in a "known tongue." It charged that the Mexican government

hath sacrificed our welfare to the State of Coahuila, by which our interests have been continually depressed through a jealous and partial course of legislation, carried on at a far distant seat of government, by a hostile majority, *in an unknown tongue*, and this too, notwithstanding we have petitioned in the humblest terms for the establishment of a separate State government, and have, in accordance with the provisions of the national Constitution, presented to the general Congress a Republican Constitution, which was, without a just cause, contemptuously rejected.²⁸¹

In considering the problems the framers of the Texas Bill of Rights were attempting to remedy, the Texas courts must consider the failure of the Mexican government to establish Texas as a separate state. The analysis cannot end there, however. The reasons the Anglo-American immigrants gave for seeking a separate state must also be considered.²⁸² One of the most important reasons they sought statehood was the failure of the Mexican state of Coahuila and Texas to address the needs of immigrants who did not speak the national language.

E. *Language Rights and Complaints About the Mexican Justice System*

Complaints by the Anglo-American immigrants about the Mexican justice system are also commonly recognized as another factor that eventually led to independence from Mexico. The Texas Declaration of Independence began by asserting that the Mexican government had "ceased to protect the lives, liberty, and property of the people, from whom its legitimate powers are derived, and for the advancement of whose happiness it was instituted"²⁸³

280. The Ayuntamiento of Brazoria to the Ayuntamiento of — (Jan. 2, 1834), *microformed on Texas as Province & Republic*, *supra* note 123, Item 44 (emphasis added).

281. THE DECLARATION OF INDEPENDENCE (Repub. Tex. 1836), *reprinted in* 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822-1897*, at 1063 (Austin, Gammel Book Co. 1898).

282. See HARRINGTON, *TEXAS BILL OF RIGHTS*, *supra* note 45, at 52 (noting that in interpreting the Texas Constitution there must be considered "the whole thrust of problems with the central government in Mexico when Texas formed that country's northern frontier").

283. THE DECLARATION OF INDEPENDENCE (Repub. Tex. 1836), *reprinted in* 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822-1897*, at 1063 (Austin, Gammel Book Co. 1898).

The Declaration later complained that the Mexican government "has failed and refused to secure, on a firm basis, the right of trial by jury, that palladium of civil liberty, and only safe guarantee for the life, liberty, and property of the citizen."²⁸⁴

Generally overlooked, however, is that many of the complaints of the Texians about the Mexican justice system stemmed from the problems created by the failure of the Mexican government to address language differences. As the 1833 Convention had noted, because the Anglo-American *alcaldes* and accused did not speak Spanish, they were ignorant of the laws, and thus the certainty that law ordinarily brings was entirely missing. As a result, disregard for the law had become prevalent, causing a perceived crime wave among Anglo-Americans.²⁸⁵

When the 1833 Convention complained that few men were qualified to prepare cases for the Supreme Court of the State of Coahuila and Texas, they were not complaining about a lack of lawyers.²⁸⁶ The lack of qualifications stemmed from the lack of *Spanish-speaking* lawyers required be-

284. *Id.* at 1065.

285. *See supra* text accompanying note 273.

286. *See supra* text accompanying note 273. Stephen F. Austin complained about the influx of lawyers among the immigrants, and the problems that resulted:

As regards the lawyers who you say in your letter are causing all the disturbance in the country, I believe they are an evil and a great one but they are patronized and encouraged and paid by the people

The truth is that the evil lays in the people [themselves]. It is a part of the national character of Americans to be contentious and litigious, and I do believe that a lawyer would fatten on 100 Americans, when he would starve on 10,000 of any other people on earth. If you wish to correct this evil therefore go to the foundation and cut it up by the roots. Let every man settle his differences by an arbitration of his neighbors, or if he goes to law let him attend to his own business and not employ a lawyer. I know of no other way of correcting the evil for if the *Alcalde* was to silence all the lawyers and suffer none to appear before him, the *PEOPLE* would immediately cry out despotism and oppression and say it was a hard case that a man could not employ an agent to attend to his business for him, and a talking lawyer would go about bawling oppression, that he was not allowed to exercise his profession and that the *Alcalde* had taken his bread from him and his poor family (if he had one) etc. And the people would no doubt take sides with the lawyer and curse the *Alcalde* much more for silencing the lawyers than they now do for not silencing them - An honest and conscientious lawyer is a valuable member of society - there is none more so, but a hot headed fractious [abus]ing and contentious lawyer is a curse on any community, and ought to be discountenanced but I really cannot see any other effectual remedy [sic] than the one I have pointed out to correct this evil - it must be corrected by settling disputes by means of arbitration in each neighborhood, and by never employing a lawyer in any case. . . .

Letter from Stephen F. Austin to Josiah H. Bell (Mar. 17, 1829), in *AUSTIN PAPERS*, 1828-1834, *supra* note 1, at 190.

cause the Mexican government did not provide access to the justice system for lawyers who only spoke English.

Nor were complaints about the problems posed by the monolingual status of the justice system limited to the Anglo-American immigrants. In the Béxar Remonstrance, the Tejanos of Béxar asked the state legislature for statehood for Texas, described the problems in the administration of justice, and noted:

And so it is that this evil needs a quick and effective remedy, requiring the naming of judges of letters and public scribes, without forgetting the heterogeneous population of Texas that for this reason needs lawyers of true and proven providence and attainments, associated with very faithful interpreters who know perfectly the Spanish and English languages²⁸⁷

The framers of the Texas Bill of Rights, native Tejanos as well as the Anglo-American immigrants, believed that the residents of Texas had a right of access to the justice system in their own language.

F. *The Desire for Multilingualism, Not English Monolingualism*

While the Anglo-Americans insisted on the right to communicate with the government in their own language, the assertion of this right did not mean that government should be conducted *only* in English. Austin believed Texas would be made a separate state only if the native Tejano population supported the move.²⁸⁸ Tejanos would not have supported an effort by recently-arrived immigrants to condemn natives to government in a language they did not understand. The efforts of the Texians were bilingual. When fear of the military grew in June 1832, Stephen F. Austin advised the President of the Ayuntamiento of San Felipe de Austin to officially report any abuses by the military to the Chief of the Department. Austin also recommended publishing the official complaints and reports of such abuses in Spanish and in English.²⁸⁹ The Béxar Remonstrance

287. Representación dirigida [sic] por el ilustre ayuntamiento de la ciudad de Béxar al Honorable Congreso del Estado, manifestando los males que afligen [sic] los pueblos de Texas, y los agravios que han sufrido desde la reunión de estos con Coahuila [Representación directed by the illustrious ayuntamiento of the city of Béxar to the Honorable State Congress, manifesting the ills that afflict the peoples of Texas, and the grievances they have suffered since their reunion with Coahuila] (Dec. 19, 1832) (translated by author from Spanish), *microformed on Texas as Province & Republic*, *supra* note 123, Item 37.

288. See Letter from Stephen F. Austin to Samuel M. Williams (Jan. 12, 1834), in AUSTIN PAPERS, 1828-1834, *supra* note 1, at 1026.

289. See Letter from Stephen F. Austin to Horatio Chriesman (June 19, 1832), in AUSTIN PAPERS, 1828-1834, *supra* note 1, at 784.

was published in both Spanish and English.²⁹⁰ Austin prepared instructions from the 1833 Convention for the mission to Congress in Spanish.²⁹¹ A Tejano, Don Erasmo Seguin, was appointed to the mission to present the petition to the Mexican Congress.²⁹² Other Tejanos translated the memorial for Austin.²⁹³

G. *The Mexican Government's Response to the Demands of the Anglo-American Immigrants: More Bilingual Governmental Services*

While Mexico did not agree to make Texas a separate state, further concessions were made to address the needs of monolingual English-speaking immigrants. Stephen F. Austin had asserted, "With only two measures Texas would be happy — judges who understand English even if only in provisional cases and the trial by jury."²⁹⁴ In May 1833, the state legislature responded to these requests. Judges were required to provide interpreters "[i]n civil and criminal cases commenced or contested in the state by persons unacquainted with the language of the country."²⁹⁵ In 1834, a Department of Brazos was established. Article 11 of the decree establishing the new Department gave English full equality with Spanish in local government in Texas: "The Castilian and English shall be lawful languages in Texas; both may be used in the acts of the public administration as the case may require, except in communications with the supreme power, which shall be made expressly in Castilian."²⁹⁶

One month later, the state legislature responded to the immigrants' continuing complaints about the justice system by establishing a bilingual court system for Texas. Judges who were not "acquainted with both the legal idioms of Texas" were required to appoint an interpreter at a salary

290. See *supra* note 288; Letter of D.W. Anthony to Stephen F. Austin (Jan. 20, 1833), in AUSTIN PAPERS, 1828-1834, *supra* note 1, at 917-18 (requesting English copy instead of Spanish copy for publication that was sent to English-language newspaper); STREETER, *supra* note 230, at 49 (noting that copies of the newspapers do not survive to verify the translations).

291. See Stephen F. Austin's Instructions from the Convention (Apr. 13, 1833), in AUSTIN PAPERS, 1828-1834, *supra* note 1, at 946-47.

292. See Letter from Stephen F. Austin to Samuel M. Williams (Jan. 12, 1834), in AUSTIN PAPERS, 1828-1834, *supra* note 1, at 1026.

293. See Letter from Stephen F. Austin to Luke Lesassier (May 6, 1833), in AUSTIN PAPERS, 1828-1834, *supra* note 1, at 961.

294. Letter from Stephen F. Austin to J. Francisco Madero (about Apr. 20, 1833) (translated by author from Spanish), in AUSTIN PAPERS, 1828-1834, *supra* note 1, at 959.

295. Decree no. 239 (1833) (State of Coahuila and Texas), reprinted in 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 332-33 (Austin, Gammel Book Co. 1898).

296. Decree no. 270 (1834) (State of Coahuila and Texas), reprinted in 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 356 (Austin, Gammel Book Co. 1898).

of \$1000 per year.²⁹⁷ Criminal trials were required to be conducted in the language of the accused party, so long as the accused spoke either English or Spanish.²⁹⁸ If jurors who spoke the language of the accused could not be found in that district, the case had to be transferred to the nearest district where such jurors could be found.²⁹⁹ A party appealing a case to the state supreme court with a written record in English was given the right to have the record translated into Spanish at his own cost by a translator appointed by the judge.³⁰⁰ The law was ordered published in both English and Spanish.³⁰¹

Mexico attempted to respond to the needs of her new monolingual English-speaking immigrants by providing for bilingual services far greater than any provided by the State of Texas or by the United States today. Mexico had previously created separate departments for the Anglo-American immigrants,³⁰² which ensured that "the local independence of the colonists was . . . about as complete as laws could make it."³⁰³ When Stephen F. Austin learned of the establishment of three departments, and the provision of judges and of trial by jury, he asserted that

297. Decree no. 277 art. 18 (1834) (State Coahuila and Texas), *reprinted in* 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822-1897*, at 366 (Austin, Gammel Book Co. 1898).

298. *See id.* art. 30 at 367. Prior to the establishment of an officially bilingual court system, cases had been tried in English before the Alcaldes of the Ayuntamientos. The Alcalde had judicial responsibility for trying civil and criminal cases. *See I HANDBOOK OF TEXAS*, *supra* note 113, at 25. *See, e.g.*, Verdict of the Jury (Jan. 31, 1824), *in* AUSTIN PAPERS, 1789-1827, *supra* note 117, at 734 (finding defendant guilty of stealing hogs and horses); Subpoena (May 13, 1824), *in* AUSTIN PAPERS, 1789-1827, *supra* note 117, at 792; Proceedings against John Houlehan for disturbing elections (Aug. 16, 1834 to Sept. 6, 1834), *microformed on* B  xar Archives, *supra* note 144, Roll 162, Documents 905-17 & 965-73 (requesting permission to expel Houlihan).

299. *See* Decree no. 277, art. 30 (1834) (State of Coahuila and Texas), *reprinted in* 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822-1897*, at 367-68 (Austin, Gammel Book Co. 1898).

300. *See id.* art. 134 at 379.

301. *See id.* art. 140 at 380; PLAN PARA EL MEJOR ARREGLO DE LA ADMINISTRACI  N DE JUSTICIA EN TEXAS (1834), *microformed on* Texas as Province & Republic, *supra* note 123, Item 805 (publishing decree in Spanish & English).

302. *See supra* text accompanying notes 247-48, and 297.

303. BARKER, MEXICO & TEXAS, *supra* note 141, at 24 (noting that political chiefs of each department were named by the governor from nominees presented by the ayuntamientos, elected by the immigrants).

"every evil complained of has been remedied."³⁰⁴ Yet for the Anglo-American immigrants, this was not enough.³⁰⁵

H. *The Consultation of 1835*

On October 3, 1835, Mexican President Antonio López de Santa Anna issued a decree that centralized power in Mexico City. The Anglo-American immigrants called for a consultation to be held in San Felipe de Austin to decide what the response of Texas should be.³⁰⁶ On October 25, 1835, Lorenzo de Zavala issued a call for Mexican liberals to join forces with Texas.³⁰⁷ On November 7, 1835, the Consultation issued a declaration refusing to acknowledge the authority of the existing Mexican government within Texas. Independence was not yet declared, however. Instead, the Consultation expressed continued faithfulness to the Mexican government "so long as that nation is governed by the Constitution and Laws that were formed for the government of the Political Association."³⁰⁸

The Consultation operated bilingually. Lorenzo de Zavala was appointed to "translate such documents or proceedings of this house as may be required." de Zavala was also requested to translate into Spanish the Consultation's declaration for a provisional government; 500 copies were ordered printed "for distribution among our Mexican fellow citizens of the republic."³⁰⁹ This declaration was to be provided, not just to the Anglo-American settlements, but "to the people of each municipality of the

304. Letter from Stephen F. Austin to Oliver Jones (May 30, 1834), in *AUSTIN PAPERS*, 1828-1834, *supra* note 1, at 1059. See also Petition from Ayuntamiento of Brazoria to Congress (about July 31, 1834), in *AUSTIN PAPERS*, 1828-1834, *supra* note 1, at 1070 (recognizing that the new state laws "applied the necessary remedy to our wrongs" and "tendering our most cordial and heartfelt gratitude both to the Federal and State [governments]").

305. Cf. LOWRIE, *supra* note 126, at 123 (describing enactment of 1834 statute permitting the use of English in legal documents, but concluding that "no law could remove the barrier of language").

306. See I *HANDBOOK OF TEXAS*, *supra* note 113, at 403.

307. See Opinión de Don Lorenzo de Zavala sobre el Estado Político Actual de los Estados Unidos Mejicanos [Opinion of Don Lorenzo de Zavala on the Current Political State of the United Mexican States] (Oct. 25, 1835), *microformed on Texas as Province & Republic*, *supra* note 123, Item 112.

308. Declaration of the People of Texas in General Convention Assembled (Nov. 7, 1835), *reprinted in* *REPUBLIC. TEX. CONST. OF 1836*, *reprinted in* 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822-1897*, at 1069 (Austin, Gammel Book Co. 1898).

309. *JOURNALS OF THE CONSULTATION HELD AT SAN FELIPE DE AUSTIN* (Nov. 8, 1835), *reprinted in* 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822-1897*, at 526 (Austin, Gammel Book Co. 1898). The translation is *microformed on Texas as Province & Republic*, *supra* note 123, Item 88. One thousand copies were printed in Spanish and one thousand in English. See STREETER, *supra* note 230, at 64.

department of Béxar.”³¹⁰ Proclamations were sent out in Spanish to the Tejanos.³¹¹ Austin sent an address in Spanish to the people of Béxar, explaining the activities of the Anglo-Americans and specifically guaranteed the rights of Texas towns inhabited primarily by Spanish-speaking Tejanos: “5th. The People of Béxar, Goliad, Guadalupe, Victoria, and San Patricio and of any other part of Texas will not be molested in any way in electing their representatives to the General consultation if they wish to do so.”³¹²

The Consultation established a provisional government that purported to operate as a state within the Mexican nation.³¹³ The intent of the framers of the Texas Bill of Rights to establish a bilingual government is evidenced by the practices of this provisional government. The plan for the provisional government established by the Consultation in November 1835 provided for a General Council consisting of one member from each municipality in Texas.³¹⁴ One of the 15 representatives at the General Council was a Tejano: J.A. Padilla of Guadalupe Victoria. On the third day of the Council, Padilla requested “an interpreter to attend him during the sitting of the Council, which was granted, and D.B. Macomb was appointed interpreter.”³¹⁵ Immediately thereafter, the report from the Committee on the Affairs of State and Judiciary was presented. It asserted, “The people should at all times have the ready means of knowing the acts of their public agents.”³¹⁶ Padilla was one of three members of this committee.³¹⁷ Obviously Padilla, who needed an interpreter at the General Council, could not know the acts of his public agents if those acts were to only be available in English, or if communication in any other language but English were to be prohibited. Thus, Article VI of the plan

310. JOURNALS OF THE CONSULTATION HELD AT SAN FELIPE DE AUSTIN, *supra* note 309, at 527.

311. See Proclamation by Stephen F. Austin (Nov. 10, 1835), in AUSTIN PAPERS, 1834-1837, *supra* note 129, at 248.

312. Address by Stephen F. Austin to Inhabitants of Béxar (about Nov. 18, 1835) (translated by author from Spanish), in AUSTIN PAPERS, 1834-1837, *supra* note 129, at 256-58. The original address is available as EL CONSEJO GENERAL DEL GOBIERNO PROVISIONAL DE TEXAS, AL PUEBLO MEXICANO [The General Council of the Provisional Government of Texas, to the Mexican People] (1835), *microformed on Texas as Province & Republic*, *supra* note 123, Item 94. Five hundred copies were printed in Spanish and 200 copies were printed in English. See STREETER, *supra* note 230, at 65.

313. See I HANDBOOK OF TEXAS, *supra* note 113, at 403.

314. See *id.* at 677.

315. JOURNAL OF THE PROCEEDINGS OF THE GENERAL COUNCIL OF THE REPUBLIC OF TEXAS HELD AT SAN FELIPE DE AUSTIN, *reprinted in* 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 551-62 (Austin, Gammel Book Co. 1898). Padilla resigned from the Council on Dec. 12, 1835. See *id.* at 659.

316. *Id.* at 562-63 (Nov. 17, 1835).

317. See *id.* at 564 (Nov. 17, 1835).

for the provisional government of Texas provided that judges would make "a court of record for conveyances, which *may* be made in English."³¹⁸ The use of the permissive "may" indicates a desire to permit the use of English or, as required under Mexican law, Spanish.

That a bilingual government was contemplated is also evident from the appointment of Tejanos as judges at Guadalupe Victoria, Goliad, and Béxar, where the populations were almost entirely Tejano and therefore Spanish-speaking.³¹⁹ Similarly, Tejanos who were almost certainly monolingual Spanish-speakers were appointed as commissioners for organizing the militia.³²⁰

The Council provided for the translation of Spanish documents into English,³²¹ and of English documents into Spanish. Translation obviously was necessary to monitor the Mexican Army.³²² Communications in Spanish were received from Mexican Federalist General José Antonio Mexía.³²³ An interpreter was used when the General Council heard a request from Colonel González, an officer in the Mexican Army, to join the Texian army at Béxar.³²⁴ A resolution thanking Colonel González for his intercession on behalf of Texian prisoners of war was ordered translated and furnished to him.³²⁵ A communication in Spanish regarding the military movements of the Mexican Army was presented by Padilla and translated.³²⁶

Thus, even as Anglo-Americans moved towards independence from Mexico, they continued to extend to Tejanos the same right they claimed

318. JOURNALS OF THE CONSULTATION HELD AT SAN FELIPE DE AUSTIN, *supra* note 309, at 540 (emphasis added); PLAN AND POWERS OF THE PROVISIONAL GOVERNMENT OF TEXAS, reprinted in 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 471-72 (Austin, Gammel Book Co. 1898).

319. See JOURNALS OF THE CONSULTATION HELD AT SAN FELIPE DE AUSTIN, *supra* note 309, at 589-90 (Nov. 26, 1835) (appointing Plácido Benavidas [Benavides] as First Judge and Francisco Cárdenas as Second Judge at Guadalupe Victoria; appointing Encarnación [Encarnación] Vásques [Vásquez] as First Judge and Robert Galán as Second Judge at Goliad; and appointing Juan N. Seguin as First Judge and Miguel Arceniega [Arciniega] as Second Judge at Béxar).

320. See *id.* (Nov. 26, 1835) (appointing Sylvester De León, Plácido Benavidas [Benavides] and Manuel Carabajal [Carbajal] at Guadalupe Victoria; and appointing Caleb Bennett, Antonio Vásques [Vásquez] and Ramón Falcón at Goliad).

321. See *id.* at 574-75 (Nov. 20, 1835).

322. See *id.* at 623 (Dec. 4, 1835).

323. See *id.* at 681 (Dec. 19, 1835) (noting receipt of "several letters in the Castilian language").

324. See *id.* at 605-06 (Nov. 30, 1835).

325. See JOURNALS OF THE CONSULTATION HELD AT SAN FELIPE DE AUSTIN, *supra* note 309, at 672 (Dec. 16, 1835).

326. See *id.* at 615 (Dec. 2, 1835); *id.* at 616 (Dec. 3, 1835).

for themselves: the right to communicate with government in their own language.

I. *The Movement Towards Independence*

After the Consultation adjourned on November 14, 1835, the loyalist sentiments of the participants rapidly evaporated. The Texians invoked natural rights as the justification for their radical and revolutionary actions. These natural rights declarations must be read in the context of the immigrants' earlier grievances. Among the reasons they believed the Mexican government had failed to protect their natural rights was the failure of the Mexican government to provide greater access to governmental services in a language known to the immigrants. On November 30, 1835, Stephen F. Austin wrote a letter to the provisional government that set forth the grievances of the Anglo-Americans, including the effect of speaking a different language. Because the centralist decree of October 3rd would prevent a consideration of the differences of the Anglo-Americans, including language, he asserted a fundamental right to secede from Mexico:

Had the change been effected by constitutional means or had a national convention been convened and every member of the confederacy been fairly represented, and a majority agreed to the change, it would have placed the matter on different ground, but even then, *it would be monstrous to admit the principle, that a majority have the right to destroy a minority, for the reason that self preservation is superior to all political obligations.*

That such a government as is contemplated by the before mentioned decree of 3d October, would destroy the people of Texas, must be evident to all, when they consider its geographical situation, so remote from the contemplated centre of legislation and power, populated as it is by a people who are so different in education, habits, customs, *language*, and local wants from all the rest of the nation, and especially where a portion of the central power have manifested violent Religious prejudices and jealousies against them.

....

The decree of the 3d October therefore if carried into effect evidently leaves no remedy for Texas but resistance, secession from Mexico and a direct resort to natural right.³²⁷

The General Council also asserted natural rights as the basis for seeking independence:

327. Letter from Stephen F. Austin to Provisional Government (Nov. 30, 1835), in AUSTIN PAPERS, 1834-1837, *supra* note 129, at 270 (emphasis added).

By the laws of creation and nature, all men are free and equal, of these natural rights no man can be forcibly deprived, on the principles of immutable justice . . . of necessity, all the legitimate powers of any government are immediately derived from the governed . . . resistance is therefore a duty. The protection of our liberties, our natural and reserved rights make it so.³²⁸

These natural rights arguments were translated and presented to Tejanos and to the rest of the Mexican population:

[The people of Texas] wish to save themselves as they have a right to do, by the law of nature.

. . . .

. . . [C]an it be possible that the whole nation will declare war against us because . . . we wish to defend the rights which God has given to man, and which the Mexican nation has solemnly guaranteed to us? No, it cannot be believed. The free Mexicans are not unjust, and they will take part in our favor.

To arms then patriotic Mexicans . . .³²⁹

J. *The Declaration of Independence*

On December 11, 1835, the General Council called for an election on February 1, 1836 to elect delegates to a convention at Washington-on-the-Brazos. Consistent with Stephen F. Austin's earlier guarantee that the rights of Tejanos would be protected,³³⁰ the elections for delegates in B  xar to the convention at Washington-on-the Brazos were held in Spanish.³³¹ Three Tejanos were elected as delegates: Lorenzo de Zavala³³²

328. JOURNALS OF THE CONSULTATION HELD AT SAN FELIPE DE AUSTIN (Dec. 4, 1835), *supra* note 309, at 622.

329. Proclamation from the General Council of the Provisional Government of Texas to the Mexican people (Dec. 11, 1835), JOURNAL OF THE PROCEEDINGS OF THE GENERAL COUNCIL OF THE REPUBLIC OF TEXAS, reprinted in 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 651-52 (Austin, Gammel Book Co. 1898). Five hundred copies of this proclamation were ordered printed in Spanish, and 200 copies in English. *See id.*

330. *See supra* text accompanying note 312.

331. *See* Letter from Juan Segu  n to Francisco Ru  z (Feb. 10, 1836), in JES  S F. DE LA TEJA, A REVOLUTION REMEMBERED: THE MEMOIRS & SELECTED CORRESPONDENCE OF JUAN N. SEGU  N 135-36 (1991) (advising Ru  z that he has been elected as a delegate). All of Juan Segu  n's correspondence reproduced in the appendix in this work is in English, but de la Teja has identified those documents written by Segu  n that are not in Spanish. *See Sources for Appendices, id.* at 197-200.

332. Lorenzo de Zavala was a native of the Yucat  n in Mexico. *See* I HANDBOOK OF TEXAS, *supra* note 113, at 498.

(representing Harrisburg), and Francisco Ruíz and Antonio Navarro (representing Béxar).³³³

The Convention at Washington-on-the-Brazos began on March 1, 1836. On the second day of the convention, a Declaration of Independence was adopted by the delegates. The Texas Declaration of Independence began with a list of the circumstances that had driven the Texians to declare independence from Mexico: "When a government has ceased to protect the lives, liberty, and property of the people, from whom its legitimate powers are derived, and for the advancement of whose happiness it was instituted"³³⁴

Language is not explicitly cited in this introduction, but in fact it was one of the principal complaints the Texians had about the Mexican justice system. The Texians had complained about the inability to enforce laws published in Spanish, and how this had created an atmosphere of lawlessness.³³⁵ Thus, this complaint regarding the lack of protection of Texian lives, liberty, and property must be read in the context of the complaints that had previously been presented to the Mexican government. Inaccessibility to the Mexican judicial and legal system because of language problems was a perennial complaint by the Texians.

Later in the Declaration of Independence, the Texians directly asserted the right to communicate with their government in their own language:

[The Mexican government] hath sacrificed our welfare to the State of Coahuila, by which our interests have been continually depressed through a jealous and partial course of legislation, carried on at a far distant seat of government, by a hostile majority, *in an unknown tongue*, and this too, notwithstanding we have petitioned in the humblest terms for the establishment of a separate State government, and have, in accordance with the provisions of the national Constitution, presented to the general Congress a Republican Constitution, which was, without a just cause, contemptuously rejected.³³⁶

The Mexican government's refusal to establish Texas as a separate state from Coahuila has been well-recognized as a cause of the independence movement. Often overlooked is the role that language played in this de-

333. See JOURNALS OF THE CONVENTION OF THE FREE, SOVEREIGN AND INDEPENDENT PEOPLE OF TEXAS, IN GENERAL CONVENTION ASSEMBLED (Mar. 1, 1836), reprinted in 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 823-24 (Austin, Gammel Book Co. 1898).

334. THE DECLARATION OF INDEPENDENCE (Repub. Tex. 1836), reprinted in 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 1063 (Austin, Gammel Book Co. 1898).

335. See *supra* text accompanying note 272.

336. THE DECLARATION OF INDEPENDENCE (Repub. Tex. 1836), reprinted in 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 1063 (Austin, Gammel Book Co. 1898).

sire to establish a separate state. But it was not language differences alone which were complained of; it was that the Coahuila-dominated state government was unwilling to address the needs of the English-speaking immigrants in Texas by expanding multilingual governmental services. This is one of the principal complaints registered in the text of the Texas Declaration of Independence quoted above.

The Texas Declaration of Independence did not merely assert these complaints as grievances. It asserted a fundamental right to have these grievances remedied:

When, in consequence of such acts of malfeasance and abduction on the part of the government, anarchy prevails, and civil society is dissolved into its original elements, in such a crisis, the first law of nature, the right of self-preservation, the inherent and inalienable right of the people to appeal to first principles, and take their political affairs in their own hands in extreme cases, enjoins it as a right towards themselves, and a sacred obligation to their posterity, to abolish such government, and create another in its stead, calculated to rescue them from impending dangers, and to secure their welfare and happiness.³³⁷

The Texans practiced what they preached. Immediately after the draft of the Constitution for the Republic of Texas was presented to the Convention, de Zavala moved to appoint an interpreter to translate "the constitution and laws of this government into the Spanish language."³³⁸ The motion was approved on March 10, 1836.³³⁹

K. *The Bilingual War for Independence from Mexico*

Like the Texan movement for independence from Mexico, the war for independence was conducted bilingually. Lieutenant Colonel Juan Seguín commanded three companies. Companies A and C were composed almost entirely of Anglo-Americans, and like most Texian troops, the language of command was no doubt English. Company B was composed primarily of Tejanos; Spanish was the language of command here.³⁴⁰ Lieutenant Colonel Seguín wrote to his commanding officer,

337. See *id.*; BRADEN, *THE TEXAS CONSTITUTION*, *supra* note 91, at 2-3 (describing the social contract philosophy of the Texas Bill of Rights).

338. JOURNALS OF THE CONVENTION OF THE FREE, SOVEREIGN AND INDEPENDENT PEOPLE OF TEXAS, IN GENERAL CONVENTION ASSEMBLED (Mar. 9, 1836), *reprinted in* 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822-1897*, at 878 (Austin, Gammel Book Co. 1898).

339. See *id.* at 885 (Mar. 10, 1836).

340. See Muster Roll of Seguín's Regiment (Dec. 31, 1836), *reprinted in* DE LA TEJA, *supra* note 331, at 148-51 (listing members of Companies A, B & C).

General Thomas J. Rusk, in Spanish.³⁴¹ Secretary of War John A. Wharton requested that Seguín make his reports in English, but authorized the employment of an interpreter to make this possible.³⁴²

Communications with Tejanos continued to be conducted in Spanish. When a Tejano requested permission to pick corns and beans from a field near Béxar, Austin wrote to him in Spanish and explained why the military situation precluded such activities.³⁴³ Captain Thomas Pratt was ordered to collect horses and mules from the ranches near Béxar, accompanied by Captain Menchaca, because "as he is acquainted with the Country and Language you may find it eligible [sic] to consult with him on such points as may be necessary to carry into due effect the object of your mission."³⁴⁴ Lieutenant Colonel Seguín continued to use Spanish in official communications with the Alcalde of Béxar.³⁴⁵ Proclamations delivered in Spanish to Tejano citizens were translated into English and published in the Texian newspapers.³⁴⁶

L. *The Limitations of Historical Argument: Racism and the Framers During the Struggle for Independence*

As noted above,³⁴⁷ historical argument is problematic since the framers did not extend equal rights to all Texans. Thus, while Tejanos were provided services in Spanish during the struggle for independence, it should be noted that anti-Mexican sentiment ran high among some Texians. Some of this sentiment was a result of mistrust of the Tejanos, who were indistinguishable from other Mexicans. Henry Smith, the first governor of the provisional government, argued that the Mexican inhabitants of Béxar had failed to join the Texians, which he believed was strong and conclusive evidence that they were really enemies. He therefore argued they should not be entitled to a seat in the General Council. He was open, however, to the other Tejano towns: "As it respects the other Mexican jurisdictions, where the touch-stone could be more properly applied,

341. See, e.g., Letter from Juan Seguín to General Thomas J. Rusk (June 7, 1836), in *DE LA TEJA*, *supra* note 331, at 141-42.

342. See Order No. 1 from Secretary of War John A. Wharton to Juan Seguín (Sept. 17, 1836), reprinted in *DE LA TEJA*, *supra* note 331, at 144-45.

343. See Letter from Stephen F. Austin to Antonio de la Garza (Nov. 16, 1835), in *AUSTIN PAPERS, 1834-1837*, *supra* note 129, at 255-56.

344. Orders from Lieutenant Colonel Juan Seguín to Captain Thomas Pratt (Mar. 26, 1837), in *DE LA TEJA*, *supra* note 331, at 163.

345. See Letter from Juan Seguín to Nicolás Flores (Mar. 29, 1837), in *DE LA TEJA*, *supra* note 331, at 165.

346. Notice from Juan N. Seguín to the Inhabitants of Béxar (June 21, 1836), published in *TELEGRAPH AND TEXAS REGISTER*, Sept. 21, 1836, reprinted in *DE LA TEJA*, *supra* note 331, at 143 (requesting that cattle be carried to where the enemy cannot use them).

347. See *supra* text accompanying note 64.

it would be different."³⁴⁸ William B. Travis claimed that the Tejanos at Béxar "are all our enemies, except those who have joined us heretofore . . . those who have not joined us . . . should be declared public enemies, and their property should aid in paying the expenses of the war."³⁴⁹

Part of the anti-Mexican sentiment was racist. Governor Henry Smith, for example, vetoed a plan to assist Mexican Federalist General Mexía, stating "I consider it bad policy to fit out or trust Mexicans in any matter connected with our Government, as I am well satisfied that we will in the end find them inimical and treacherous."³⁵⁰ Smith's successor, James W. Robinson, was no better in his assessment of Native Americans and Mexicans: "Surrounded on one side by hordes of merciless savages, brandishing the tomahawk and scalping knife, recently red with human gore; and on the other, the less merciful glittering spear and ruthless sword of the descendants [sic] of Cortes, and his modern goths and Vandals . . ."³⁵¹ The Texas Declaration of Independence asserted that the Mexican people of the interior "are unfit to be free, and incapable of self-government."³⁵²

348. Letter from Governor Henry Smith to President and Members of the Legislative Council (Dec. 12, 1835), *JOURNAL OF THE PROCEEDINGS OF THE GENERAL COUNCIL OF THE REPUBLIC OF TEXAS*, reprinted in 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822-1897*, at 658-59 (Austin, Gammel Book Co. 1898).

349. Letter from W. Barrett Travis to Convention (Mar. 3, 1836), *id.* at 846; *see also* F. W. Johnson et al., Protest (Nov. 6, 1835), in *AUSTIN PAPERS, 1834-1837*, *supra* note 129, at 242-43 (protesting against any Mexican "save those belonging to our army" being permitted to gather "corn-Beef or any provisions of any Sort"). Two Texians were "opposed to Mexicans entering the Camp at all," while one was "opposed to permission being given to them to return when once entering the army." *Id.*

350. Letter from Governor Henry Smith to the President and General Council (Dec. 9, 1835), *JOURNAL OF THE PROCEEDINGS OF THE GENERAL COUNCIL OF THE REPUBLIC OF TEXAS HELD AT SAN FELIPE DE AUSTIN*, reprinted in 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822-1897*, at 643-44 (Austin, Gammel Book Co. 1898). The Council overrode the veto. *See id.* Governor Smith was removed from office on January 11, 1836, in part because of his refusal to cooperate with Colonel González and General Mexía. *See id.* at 762-70.

351. Letter from James W. Robinson to General Council (Jan. 14, 1836), *id.* at 780, 783.

352. *THE DECLARATION OF INDEPENDENCE* (Repub. Tex. 1836), reprinted in 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822-1897*, at 1063 (Austin, Gammel Book Co. 1898). Presumably this characterization did not apply to the Mexicans of Texas since three Tejanos (Francisco Ruíz, José Antonio Navarro, and Lorenzo de Zavala) signed the Texas Declaration of Independence. *Cf.* *GOLIAD DECLARATION OF INDEPENDENCE* (Dec. 20, 1835), reprinted in 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822-1897*, at 818 (Austin, Gammel Book Co. 1898) (asserting "the general diffusion among the Creole population of a like attachment to the institutions of their ancient tyrants. Intellectually enthralled, and strangers to the blessings of regulated liberty, the only philanthropic service which we can ever

Racism against African Texans was also blatant. Stephen F. Austin had mixed feelings about slavery, but prior to independence he did not hesitate to invoke his purported constitutional right "as a Mexican" to own slaves.³⁵³ With independence from Mexico, the Texans intended to maintain slavery, an institution they had struggled to preserve despite Mexican laws prohibiting slavery.³⁵⁴ The General Council prohibited

force on their acceptance, is that of example"). The Goliad Declaration of Independence was signed by two Tejanos, M. Carbajal and Miguel Aldrete. *See id.*

353. *See* Letter from Stephen F. Austin to John Durst (Nov. 17, 1829), in AUSTIN PAPERS, 1828-1834, *supra* note 1, at 288-89.

354. Mexican law strictly regulated slavery and envisioned the abolition of slavery in the near future. Initially, Stephen F. Austin was able to persuade the Mexican Congress to reverse its intended ban on slavery; instead the first immigrants were permitted to bring slaves, but the children of the slaves were to be free at the age of fourteen years. *See* BARKER, MEXICO & TEXAS, *supra* note 141, at 72; *see also* Colonization Law of 1823, Mexico, art. 30 (1823), *reprinted in* 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 30 (Austin, Gammel Book Co. 1898). This guarantee of slavery did not apply to later colonists. *See* Decree no. 190, art. 35 (1832) (State of Coahuila and Texas), *reprinted in* 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 189, 193 (Austin, Gammel Book Co. 1898) (similar language to same effect); BARKER, MEXICO & TEXAS, *supra* note 141, at 72; Decree no. 16, art. 46 (1825) (State of Coahuila and Texas), *reprinted in* 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 105 (Austin, Gammel Book Co. 1898) (providing that "as regards the introduction of slaves, new settlers, shall obey the laws already established, and which hereafter may be established on the subject"). The preliminary text of the Constitution of 1827 prohibited slavery "now and forever" and declared all slaves free. Stephen F. Austin was able to change this to a milder version prohibiting enslavement in the future and prohibiting the introduction of new slaves after 6 months. *See* STREETER, *supra* note 230, at 238. Mexican law on slavery during this period included the Constitution of Coahuila & Texas, art. 13 (Mar. 11, 1827) (State of Coahuila and Texas), *reprinted in* 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 424 (Austin, Gammel Book Co. 1898) (providing that no one shall be born a slave in the state and that after 6 months slaves may not be introduced under any pretext); Decree no. 18 (1827) (State of Coahuila and Texas); *id.* at 188-89 (providing for the manumission of one-tenth of an owner's slaves with each change in ownership); Decree no. 35 (1827) (State of Coahuila and Texas); *id.* at 202 (permitting slave to change masters if new master indemnifies old master for cost of slave). Mexican President Guerrero on September 15, 1829 issued a proclamation emancipating all slaves in Mexico, but later declared the proclamation had no effect on slaves in Texas. *See* BARKER, MEXICO & TEXAS, *supra* note 141, at 77-79. The Anglo-American immigrants widely flouted these anti-slavery laws, often by claiming their slaves were indentured servants. *See id.* at 74-75. In 1832, state law attempted to close this loophole. *See* Decree no. 190, art. 36 (1832) (State of Coahuila and Texas), *reprinted in* 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 299, 303 (Austin, Gammel Book Co. 1898) (limiting servants and day laborers introduced by foreign settlers to a contract term no longer than 10 years). The Anglo-Americans vigorously protested these limits. For a description of the role of slavery in the movement for independence from Mexico, *see* Paul D. Lack, *Slavery and the Texas Revolution*, 89 S.W. HIST. Q. 181 (1985).

"the importation and emigration of free negroes and mulattoes into Texas."³⁵⁵

A committee of the General Council condemned proposals to sell land to Native Americans as "in the highest degree criminal and unpardonable on the part of those engaged in this wicked enterprise [sic]."³⁵⁶ Similarly, the Texas Declaration of Independence accused Mexico of using emissaries to incite "the merciless savage, with the tomahawk and scalping-knife, to massacre the inhabitants of our defenseless frontiers."³⁵⁷

VI. GOVERNMENT AND LANGUAGE IN THE REPUBLIC OF TEXAS

By 1836, the influx of Anglo-American immigrants had made Tejanos a minority in their own land.³⁵⁸ One might expect that the Texians would ignore the Tejano minority and conduct government in English, the language of the majority of the population.

But such was not the case. The government of the Republic of Texas recognized the Tejanos as citizens,³⁵⁹ and respected the language rights of the Tejano minority. The Texians who, when they had been the minority, had asserted a right to communicate with the Mexican government in English, now provided opportunities for the Tejanos to communicate with the government of the Republic of Texas in Spanish.³⁶⁰

355. JOURNAL OF THE PROCEEDINGS OF THE GENERAL COUNCIL (Jan. 1, 1836), *supra* note 315, at 720-21. The ordinance was approved on Jan. 5, 1836. *See id.* at 738. The ordinance is also reprinted in 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 1024-25 (Austin, Gammel Book Co. 1898) (noting that the ordinance "was handed over to Governor Smith for approval but never returned.").

356. JOURNAL OF THE PROCEEDINGS OF THE GENERAL COUNCIL OF THE REPUBLIC OF TEXAS (Jan. 2, 1836), reprinted in 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 724 (Austin, Gammel Book Co. 1898) (discussing proposal to sell lands to Creek Indians).

357. THE DECLARATION OF INDEPENDENCE (Repub. Tex. 1836), reprinted in 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 1063 (Austin, Gammel Book Co. 1898).

358. *See* Jordan, *A Century and a Half of Ethnic Change in Texas, 1836-1986*, *supra* note 27, at 393 (estimating that in 1836, "no more than 7,000 or 8,000 Spaniards, Christianized Indians, and mestizos resided in Texas, already for a decade a minority group in their own homeland").

359. *See* Hardy v. De León, 5 Tex. 211, 227 (1849) (finding that Sylvester De León of Victoria was a citizen of the Republic of Texas and rejecting argument that he was a citizen of Mexico and an alien enemy).

360. *Cf.* Harrington, *Framing a Texas Bill of Rights Argument*, *supra* note 81, at 430 (noting that [r]acial and ethnic polarization [between Tejanos and Anglos] was often exacerbated, but the people recognized the need to structure a *modus vivendi* to establish stability).

A. *Bilingual Government in the Republic of Texas*

The Convention at Washington-on-the-Brazos adopted a Constitution for the newly-established Republic of Texas on March 16, 1836. The Constitution was ratified at an election held on the first Monday of September 1836.³⁶¹

The Constitution of the Republic of Texas was signed by the three Tejano delegates to the Convention: Francisco Ruíz, José Antonio Navarro, and Lorenzo de Zavala.³⁶² While Lorenzo de Zavala spoke English,³⁶³ Francisco Ruíz and José Antonio Navarro did not.³⁶⁴ Few Tejanos spoke English in 1836. It is inconceivable that these Tejano framers intended to condemn themselves and their fellow Tejanos to live in their own homeland under a government to be conducted "in an unknown tongue,"³⁶⁵ particularly when the Anglo-American immigrants had so recently urged the Mexican government to provide more bilingual governmental services.

Nor does the evidence suggest the Texian framers intended to establish an English-only government. The Texians had boldly asserted a right to communicate with their government in their own language. Whatever their failings from a modern perspective with respect to issues of race, gender, and slavery, these individuals were all too familiar with the problems created when a minority is unable to communicate in the language of the government of the majority. Thus, both the laws and the practice in the Republic of Texas established multilingualism in governmental services.

361. See 3 TEX. CONST. 482, n.* (Vernon 1993).

362. See REPUB. TEX. CONST. of 1836, *reprinted in* 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 1069 (Austin, Gammel Book Co. 1898).

363. See I HANDBOOK OF TEXAS, *supra* note 113, at 498 (stating that de Zavala studied English while imprisoned by the Spanish government).

364. Antonio Navarro requested and received an interpreter when he served in the Constitutional Convention of 1845. See JOURNALS OF THE CONVENTION ASSEMBLED AT THE CITY OF AUSTIN ON THE FOURTH OF JULY, 1845, FOR THE PURPOSE OF FRAMING A CONSTITUTION FOR THE STATE OF TEXAS iv (Shoal Creek Publishers 1974) (1845) (noting the Convention's grant of permission to Navarro to engage an interpreter). José Francisco Ruíz was "[u]nable to speak English". II HANDBOOK OF TEXAS, *supra* note 113, at 514.

365. See BOBBITT, CONSTITUTIONAL FATE, *supra* note 15, at 190 (noting that "historical argument suggests a sort of social contract between government and the people, the original intention of both parties being held to determine the construction of that instrument, the written Constitution, that is the memorialization of the agreement. Courts, on this view, examine legislation to see if it comports with the original understanding of the parties.").

1. Provisions for Non-English-Speaking Government Officials

The Constitution of the Republic of Texas provided, "All Judges, Sheriffs, Commissioners, and other civil officers shall remain in office, and in the discharge of the powers and duties of their respective offices, until there shall be others appointed or elected under the Constitution."³⁶⁶ Since many of these officials were monolingual Spanish-speaking Tejanos, the Constitution clearly contemplated that these governmental functions would continue to be carried out in the language spoken by the particular governmental official. This practice continued after officials were named under the authority of the new Constitution. Thus, land sales in Nacogdoches in 1839 before Judge Louis Ruíz were in Spanish.³⁶⁷

Just as Tejanos, aided by interpreters, had served in the various conventions leading up to the establishment of the Republic of Texas, Tejanos served in the Congress of the Republic of Texas with the assistance of interpreters. Senator Juan Seguín "never acquired command of English."³⁶⁸ He therefore debated in the Senate of the Republic of Texas in Spanish.³⁶⁹ Although he needed an interpreter, Seguín served as Chair of the Committee on Military Affairs, and served on the Committee of Claims and Accounts.³⁷⁰

2. The Provision of Bilingual Laws

The Republic of Texas provided bilingual laws for Texians and for Tejanos. Responding to one of the major complaints of the Texians before independence,³⁷¹ Spanish and Mexican laws were translated into English. The Constitution of the Republic of Texas provided that "All laws relating to land titles shall be *translated*, revised, and promulgated."³⁷² The Congress of the Republic of Texas required the commissioner of the general land office to appoint a translator who "shall understand the Castilian [sic] and English languages" and who was required to translate and

366. REPUB. TEX. CONST. of 1836, Schedule § 8 *reprinted in* 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 1069 (Austin, Gammel Book Co. 1898).

367. *See* Davidson v. Ryle, 103 Tex. 209, 124 S.W. 616, 617-18 (1919) (describing sale of land in Jefferson County).

368. DE LA TEJA, *supra* note 331, at 53. A newspaper reporter in 1886 interviewed Seguín and reported that "[t]he old gentleman speaks some English, but the conversation was mainly carried on through the medium of his grandson, Mr. Guillermo M. Seguin . . ." LAREDO TIMES, *reprinted in* CLARKSVILLE NORTHERN STANDARD, Feb. 25 1887, *reprinted in* DE LA TEJA, *supra* note 331, at 192.

369. *See* DE LA TEJA, *supra* note 331, at 33.

370. *See id.*

371. *See supra* part IV.G.

372. REPUB. TEX. CONST. of 1836, General Provisions § 7, *reprinted in* 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 1069 (Austin, Gammel Book Co. 1898).

record "all the laws and public contracts relative to the titles of land which are written in the Castillian [sic] language, and also . . . all original titles which are written in the Castillian [sic] language."³⁷³ The laws of the Mexican state of Coahuila and Texas were published in both Spanish and English.³⁷⁴ The Velasco Treaty, terminating the war for independence, was also published in both languages.³⁷⁵

Because the Texians had complained of the injustice of being required to obey laws they could not understand, the Republic of Texas "in justice to that numerous portion of our fellow citizens who understand only the Spanish language, and who are consequently wholly ignorant of the most important laws to which their obedience is required," authorized the translation of all general and penal enactments.³⁷⁶ Further, the Congress required that "in future all general enactments shall as soon as practicable be translated into Castilian, and transmitted to the chief justices and justices of the peace of said counties [sic], who shall give all due publicity to said laws; provided, the expense shall not exceed three hundred dollars annually."³⁷⁷

A similar statute was enacted in 1839, but without the three hundred dollar limitation.³⁷⁸ At the end of the session, Senator Seguín was promised he would be kept informed of the progress in publishing these translations. In March 1839, the Department of State advised Senator Seguín that they had waited for the laws of the last session to be printed, which took longer than expected, but promised that the laws would be "forwarded by next packet" to be translated and printed in New Orleans.³⁷⁹

When the translations of the laws into Spanish were still not available almost a year later, Senator Juan Seguín, a hero of the Texas Revolution

373. Act approved Dec. 14, 1837, 2d Cong., R.S., § 34, 1837 Repub. Tex. Laws 62, 73, reprinted in 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 1415 (Austin, Gammel Book Co. 1898).

374. See SECRETARY OF STATE OF REPUBLIC OF TEXAS, LAWS & DECREES OF THE STATE OF COAHUILA & TEXAS, IN SPANISH & ENGLISH (1839), microformed on Texas as Province & Republic, *supra* note 123, Item 310. This translation would have been published earlier but for difficulties in finding a suitable translator. See STREETER, *supra* note 230, at 115.

375. See AGREEMENT BETWEEN SANTA ANNA & THE TEXIAN GOVERNMENT (1836), microformed on Texas as Province & Republic, *supra* note 123, Item 177.

376. Joint Resolution approved Dec. 18, 1837, 2d Cong., R.S., 1837 Repub. Tex. Laws 99, reprinted in 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 1441, 1442 (Austin, Gammel Book Co. 1898).

377. *Id.*

378. See Act approved Jan. 23, 1839, 3d Cong., R.S., 1839 Repub. Tex. Laws 76, 77, reprinted in 2 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 76-77 (Austin, Gammel Book Co. 1898).

379. See Letter from Nathaniel C. Amory to Juan Seguín (Mar. 16, 1839), in DE LA TEJA, *supra* note 331, at 173.

and the only Tejano in the Senate, addressed the Senate on the issue, first challenging the exorbitant estimate of the cost of the translations:

I wish, sir, to know upon what data the Second Auditor founded his estimate of the cost of translating and printing the Laws to be enacted by the present Congress, to the amount of \$15,000. I wish to know, Mr. President, what the cost of translating the laws, enacted [sic] by the former Legislative bodies of Texas is, laws which in virtue of the existing laws upon that subject, ought to have been translated, and printed; also, what laws have been translated, and where do they exist?³⁸⁰

Then, echoing the view of the Anglo-American immigrants prior to independence, Seguín asserted a right to the translations:

My constituents have, as yet, not seen a single law translated and printed; neither do we know when we shall receive them: Mr. President, *the dearest rights of my constituents as Mexico-Texians are guaranteed by the Constitution and the Laws of the Republic of Texas; and at the formation of the social compact between the Mexicans and the Texians, they had rights guaranteed to them; they also contracted certain legal obligations - of all of which they are ignorant, and in consequence of their ignorance of the language in which the Laws and the Constitution of the land are written.* The Mexico-Texians were among the first who sacrificed their all in our glorious Revolution, and the disasters of war weighed heavily upon them, to achieve those blessings which, it appears, [they] are destined to be the last to enjoy, and as a representative from Béxar, I never shall cease to raise my voice in effecting this object.³⁸¹

Secretary of State Lipscomb had apparently expressed doubts about continuing the translation because of the expense.³⁸² On June 21, 1840, Senator Seguín wrote to the acting Secretary of State, again inquiring as to the progress of the translation. Acting Secretary of State Joseph Waples responded on July 1, 1840 that the translation had been delayed because paper could not be obtained in New Orleans, but that it should

380. Juan Seguín, ADDRESS TO THE SENATE OF THE REPUBLIC OF TEXAS (Feb. 1840), reprinted in DE LA TEJA, *supra* note 331, at 174.

381. *Id.* (emphasis added). In 1974, Juan N. Seguín's remains were moved from Nuevo Laredo, Tamaulipas, Mexico to Seguín, Texas. The inscription on the tomb asserts that Seguín supported "bi-lingual publishing of textbooks," but there is no evidence to support this assertion. See DE LA TEJA, *supra* note 331, at 55.

382. See STREETER, *supra* note 230, at 149. The Republic was charged \$2.50 per printed page. See *id.*

be completed soon.³⁸³ The Spanish translation was finally printed in 1841.³⁸⁴ It included the Declaration of the People of Texas in General Convention Assembled (Nov. 7, 1835), the Plans and Powers of Establishing the Provisional Government (Nov. 13, 1835), the Texas Declaration of Independence, the Constitution of the Republic of Texas, most of the Acts of the first 3 Congresses, and 2 joint resolutions. Not included in the translation were the acts incorporating towns and private corporations nor the act establishing the General Land Office.³⁸⁵

A third statute requiring translation of the laws into Spanish "immediately upon the adjournment of Congress of each year" was enacted in January 1842.³⁸⁶ Five days later, however, the Secretary of State was ordered to suspend the printing of the laws in Spanish.³⁸⁷ There is little in

383. See Letter from Joseph Waples to Juan Seguín (July 1, 1840), *reprinted in* DE LA TEJA, *supra* note 331, at 175.

384. Publication was in late 1841. The printer wrote to the Secretary of State's office in August 1841 promising to complete the translation "in about three weeks." Letter from J.W. Cruger to J. Waples, in 3 JOURNALS OF THE SIXTH CONGRESS OF THE REPUBLIC OF TEXAS, 1841-1842, at 278 (Capital Printing Co., Inc. 1945) (1842) [hereinafter JOURNALS OF CALLED SESSION, 1842]. In October, 1841, Mr. Waples reported to the Secretary of State that "there has not been much done since the adjournment of the last Congress, that we have been apprized of. See *id.* The appropriation then made of \$10,000 was paid to Messrs. Cruger & Moore for arrearages due for said printing." Letter from Joseph Waples to Secretary of State Samuel A. Roberts (Oct. 12, 1841), in REPORT OF THE SECRETARY OF STATE, 1841, *reprinted in* JOURNALS OF CALLED SESSION, 1842, *supra*.

385. See STREETER, *supra* note 230, at 149. For the finished translation, see S. P. ANDREWS, CONSTITUCIÓN, LEYES GENERALES [sic], & C. DE LA REPUBLICA DE TEJAS. TRADUCIDAS AL CASTELLANO, POR S.P. ANDREWS, ABOGADO DE LOS TRIBUNALES DE DICHA REPÚBLICA. POR DISPOSICIÓN DEL SECRETARIO DE ESTADO [CONSTITUTION, GENERAL LAWS, ETC. OF THE REPUBLIC OF TEXAS. TRANSLATED TO CASTILIAN BY S. P. ANDREWS, ATTORNEY OF THE TRIBUNALS OF SAID REPUBLIC. BY ARRANGEMENT WITH THE SECRETARY OF STATE] (1841), *microformed on* Texas as Province & Republic, *supra* note 123, Item 477.

386. See Joint Resolution approved Jan. 12, 1842, 6th Cong., R.S., 1842 Repub. Tex. Laws 35, *reprinted in* 2 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 707 (Austin, Gammel Book Co. 1898). The joint resolution provided:

[T]he Secretary of State . . . is hereby required, immediately upon the adjournment of Congress of each year, to cause all laws of a general nature to be translated into the Spanish language, and published in any newspaper of the city of San Antonio; or should there be no newspaper published in San Antonio, the said laws shall be printed in some paper published in the Republic: provided, that at least two hundred and fifty copies of each number of the paper containing the laws be furnished the Secretary of State for circulation; and provided, further, the expense of such translation and publication shall not exceed six hundred dollars per annum.

387. See Joint Resolution approved Jan. 17, 1842, 6th Cong., R.S., 1842 Repub. Tex. Laws 38, *reprinted in* 2 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 710 (Austin, Gammel Book Co. 1898). A typographical error in Gammel identifies the date of this joint resolution as January 17, 1841.

the records of the Congress of the Republic of Texas that would indicate why this decision was made. One explanation might be that, for the first time in the history of the Republic, no Tejanos served in the Congress to pressure their colleagues to provide Spanish translations.³⁸⁸ The convoluted legislative history of these two bills reveals, however, that for the Anglo-American representatives of areas with large Tejano populations, the availability of Spanish language translations was a legislative priority. This convoluted legislative history leaves one wondering how each legislative body could independently take such contradictory actions over a very short period of time.³⁸⁹

388. José Antonio Navarro served in the Third Congress in 1838 and 1839. He was elected to the Fourth Congress, but resigned because of illness. He served as state senator in the First and Second Legislatures after statehood. *See* II HANDBOOK OF TEXAS, *supra* note 114, at 262-63. Juan N. Seguín, the only other Tejano to serve in the Congress of the Republic of Texas, was elected to the Senate in 1838. *See id.* He resigned in 1840. *See id.* at 590.

389. A bill to suspend the printing of the laws in Spanish was first introduced in the House on Dec. 10, 1841. H.J. OF TEX., 6th Cong. 125 (1841) [hereinafter HOUSE JOURNAL, 1841-42]. The journal of December 15th characterized the proposal as a joint resolution on its second reading. *See id.* at 162-63 (Dec. 15, 1841). The following day, the joint resolution "was laid on the table." *See id.* at 165 (Dec. 16, 1841).

The very next day, a bill requiring the translation of the laws of each session of Congress and their publication in a public journal was engrossed. *See id.* at 183 (Dec. 17, 1841). There is no record in the *Journal* of a second reading. The bill was passed on third reading on Dec. 22, 1841, with the journal noting that Mr. Van Ness, the representative from Bexar County, supported it. *See id.* at 203.

On Dec. 31st, the joint resolution to suspend the printing of laws was resurrected, read a third time, and passed. *See id.* at 248. This already confusing legislative history does not end here, however. On January 4, 1842, the House took up the bill providing for the printing of the laws in Spanish, "with the amendments of the Senate" and adopted it. *Id.* at 272. Thus, as of January 4th, a law requiring the publication of the laws in Spanish was enacted by the Congress. Under the Constitution of the Republic of Texas, this bill became law if not returned by the President of the Republic within five days after being presented to him for his approval and signature. *See* REPUB. TEX. CONST. of 1836, art. 1, § 26, *reprinted in* 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 1069 (Austin, Gammel Book Co. 1898).

The Senate, in the interim, had also been busy. The first bill to suspend the printing of the laws in Spanish had been introduced in the Senate on November 23, 1841, two weeks before any such proposal in the House. *See* 1 JOURNALS OF THE SIXTH CONGRESS OF THE REPUBLIC OF TEXAS, 1841-1842 at 58 (Von Boeckmann-Jones Co. 1940) (1841-1842) [hereinafter SENATE JOURNAL, 1841-1842]. The bill was referred the following day to the Judiciary Committee, almost immediately after Senator Daingerfield, the senator from Bexar County, was added to that committee. *See id.* at 60. The following day, the judiciary committee recommended approval of the bill, but Senator Daingerfield submitted a minority report in which he proposed that any laws that "have not been translated and published under the provisions of the Act hereby repealed be translated and published in one of the News-Papers of the Republic . . ." *Id.* at 61. The next day, Senator Daingerfield succeeded in having the committee reports made the special order of the day for the following

One explanation for the contradiction might be the exorbitant bills submitted by a Houston printer for the printing of the translations. After spending less than \$10,000 for translations in 1840, and again in 1841,³⁹⁰ Secretary of State Samuel A. Roberts reported to President Mirabeau B. Lamar in October 1841 that the cost of 2,000 copies of the translated laws was estimated to be more than \$75,000. Secretary of State Roberts reported the cost of printing the acts of the First, Second, and Third Congresses to have been \$7,221. He estimated the cost of printing the acts of the Fourth and Fifth Congress to be \$9,562.60; however, because the paper money of the Republic was not accepted at face value, the actual cost was estimated to be \$75,684 for 2000 copies.³⁹¹ Secretary of State Roberts noted that no more than 200 copies of any law had ever been published in English, and that the publication of 2000 copies seemed excessive given the proportion of Spanish-speakers in the population. He complained that the cost of the Spanish translations was double that of the English printings, and that the printer, J.W. Cruger, was accruing a

Monday. *See id.* at 64. On November 30, 1841, the bill to repeal the required publication of the laws in Spanish was referred to a special committee composed of Senators Daringfield, Byrne, and Owen. *See id.* at 80. Senator Byrne represented Goliad, Refugio, and San Patricio. Senator Owen represented Matagorda, Jackson, and Victoria. Thus all three members of the special committee represented areas of the state whose population, prior to independence, had been predominately Tejano. The special committee reported a substitute bill; the report of the special committee was adopted. *See id.* at 89 (Dec. 3, 1841). However, later that same day the report was "laid on the table." *Id.* at 91.

The Senate took no further action until December 23, 1841, when it received a message informing it of the passage by the House of a joint resolution for the translation of the laws into Spanish. *See id.* at 145. This is the bill passed by the House on December 22, 1841, and described above. The resolution received a first reading on December 23, 1841. *See id.* at 154. The joint resolution received a second reading on December 29, 1841. *See id.* at 164. A third reading of the joint resolution, amended to provide for the printing of 250 copies, was completed on December 30, 1841, and the bill was passed. *See id.* SENATE JOURNAL, 1841-42 at 175. This is the amended bill that was enacted by the House on January 4, 1842.

On January 3, 1842, however, the Senate received a message from the House informing it that a joint resolution to suspend the printing of the laws in Spanish had been approved. *See id.* at 186. The joint resolution received its first reading in the Senate that same day. *See id.* at 188. The joint resolution received a second reading the following day. *See id.* at 192. The joint resolution was read a third time, and passed, on January 5, 1842. *See id.* at 199. The House had approved the Senate's earlier bill *requiring* Spanish translations the day before.

390. The Republic had spent \$5,595.52 on the translation and printing of laws in Spanish in 1840. *See* REPORT OF THE SECRETARY OF THE TREASURY, *in* JOURNALS OF CALLED SESSION, 1842, *supra* note 384, at 324. In 1841, \$10,000 was spent for this purpose. *See id.* at 329.

391. *See* Letter from Samuel A. Roberts to Mirabeau B. Lamar (Oct. 27, 1841), *reprinted in* REPORT OF SECRETARY OF STATE, *in* JOURNALS OF CALLED SESSION, 1842, *supra* note 384, at 187.

profit of four hundred per cent.³⁹² He canceled the contract with Cruger and, contradicting the judgment of the Congress of the Republic, described it as "a useless expenditure of a large sum of money."³⁹³

The disparagement by Secretary of State Roberts of the translations as "useless," and his claim in his letter to Cruger that the number of copies was "nearly equal to every person speaking the Castillian [sic] Language in the Republic,"³⁹⁴ may have been an exaggeration for effect, or he may have actually believed this to be the case. Roberts was a recent immigrant to Texas, having arrived in 1837; accordingly he had never experienced the frustrations of the earlier Anglo-American immigrants with the unavailability of translations of Spanish and Mexican law prior to independence. Roberts never lived in areas of the Republic with large Tejano populations,³⁹⁵ and thus had little familiarity with conditions outside of East Texas and Austin.

Senator Seguín, of course, had complained earlier about the excessive cost estimates for publishing the translations of the laws.³⁹⁶ His complaints were certainly justified. Samuel Whiting, a printer in Austin, estimated the cost of printing 2,000 copies of a 330-page Spanish translation to be \$1,699.³⁹⁷ Cruger had charged the Republic \$6,397 for this same work.³⁹⁸ The translation had cost \$824.³⁹⁹ Hence, the total cost of the translations for the first three Congresses should have been no more than \$2,523. The clerk in the Secretary of State's office responsible for the printing of state documents had suggested requiring all printing to be done in Austin to facilitate supervision and avoid problems with Cruger's work.⁴⁰⁰

The ire of Roberts regarding the expense of the translations was raised when Cruger informed him that Acting Secretary of State Mayfield had contracted with Cruger in May 1840 to publish the next set of transla-

392. *Id.* at 188.

393. Letter from Samuel A. Roberts to J. W. Cruger (Oct. 26, 1841), in *JOURNALS OF CALLED SESSION, 1842*, *supra* note 384, at 277.

394. *Id.*

395. *See* II *HANDBOOK OF TEXAS*, *supra* note 114, at 485.

396. *See supra* text accompanying note 380.

397. *See* Letter from Samuel Whiting to Samuel A. Roberts (Oct. 27, 1841), in *JOURNALS OF CALLED SESSION, 1842*, *supra* note 384, at 280.

398. *See* Letter from Samuel A. Roberts to Mirabeau B. Lamar (Oct. 27, 1841), in *JOURNALS OF CALLED SESSION, 1842*, *supra* note 384, at 187.

399. *See id.*

400. *See* Letter from Joseph Waples to Secretary of State Samuel A. Roberts (Oct. 12, 1841), in *REPORT OF THE SECRETARY OF STATE, 1841*, *reprinted in JOURNALS OF CALLED SESSION, 1842*, *supra* note 384, at 276-77.

tions.⁴⁰¹ Although Roberts unilaterally canceled the contract, the suspension of the translation of the laws by the Congress may have been intended to ensure that the financially troubled Republic⁴⁰² would not be subject to a claim by Cruger if the Spanish translations were published by another printer. Although translations of the laws were suspended for a few years, Texas resumed the publication of the laws in languages other than English immediately after statehood.⁴⁰³

3. Other Bilingual Governmental Practices

The Republic of Texas did not wait for official translations to be published to inform Tejanos and Texians of the laws and activities of the government. Secretary of State Stephen F. Austin recommended to President Sam Houston that Mexican General Vicente Filisola's observations on the Texas campaign be translated into English and published at government expense.⁴⁰⁴ When the Congress of the Republic of Texas called upon Texans to unite against Indian attacks, the call was ordered published in Spanish as well as English.⁴⁰⁵ Legislative action to protect the frontier was also published in Spanish.⁴⁰⁶ Rewards for the capture of fugitives were announced in Spanish.⁴⁰⁷ When General Thomas J. Rusk issued a General Order regarding hunger in Nacogdoches, he did so in

401. See Letter from J. W. Cruger to Samuel A. Roberts (Sept. 22, 1841), in *JOURNALS OF CALLED SESSION, 1842*, *supra* note 384, at 279.

402. See, e.g., *PETITION OF SAMUEL WHITING*, reprinted in *SENATE JOURNAL OF 1841-1842*, *supra* note 389, at iii-iv (noting a petition from printer who had not been paid for the Senate Journal, and therefore had refused to print the House Journal); Letter from Secretary of State Samuel A. Roberts to J. W. Cruger (Oct. 26, 1841), in *JOURNALS OF CALLED SESSION, 1842*, *supra* note 384, at 277 (noting the "present exhausted condition of the Treasury").

403. See, e.g., Act approved Apr. 18, 1846, 1st Leg., R.S., 1846 Tex. Gen. Laws 85, reprinted in 2 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822-1897*, at 1391 (Austin, Gammel Book Co. 1898) (requiring publication of state constitution and laws in Spanish and German).

404. Letter from Stephen F. Austin to President Sam Houston (Nov. 21, 1836), in *AUSTIN PAPERS, 1834-1837*, *supra* note 129, at 458.

405. See *ADDRESS OF CONGRESS TO ALL THE PEOPLE OF TEXAS* (Nov. 12, 1838), microformed on Texas as Province & Republic, *supra* note 123, Item 261. The Senate ordered 600 copies, 100 of which were to be printed in Spanish. The bill from the printer does not include the charges for the Spanish copies. See *STREETER*, *supra* note 230, at 106.

406. See *JOINT RESOLUTION APPROPRIATING MONEY & ARMS FOR THE PROTECTION OF THE FRONTIER* (1838), microformed on Texas as Province & Republic, *supra* note 123, Item 274. The Senate on November 8, 1838 ordered that 100 copies be printed in Spanish. The printer's bill is dated November 7, 1838. See *STREETER*, *supra* note 230, at 108.

407. See *A PROCLAMATION: BY THE PRESIDENT OF THE REPUBLIC OF TEXAS* (Aug. 30, 1838), microformed on Texas as Province & Republic, *supra* note 123, Item 282 (offering reward in English and Spanish for one Cox).

Spanish.⁴⁰⁸ A proclamation by President Sam Houston regarding the Tejanos at Nacogdoches was published in Spanish.⁴⁰⁹ Regulations for the conduct of trade with settlements near the Río Grande were sent in Spanish to the county judges at San Patricio,⁴¹⁰ Bexar, Goliad, and Victoria.⁴¹¹ A proclamation opening trade on the Río Grande was published in English and in Spanish.⁴¹² A proclamation calling for elections in San Augustine County may have been issued in Spanish.⁴¹³ Since independent Indians continued to live in Texas during this period, the President of the Republic was authorized to appoint up to 4 interpreters to deal with Native Americans.⁴¹⁴

4. The Continuing Use of Spanish-Language Laws by the Texas Courts

With independence, Anglo Texians established a judicial system which operated primarily in English. Given the demographics of the Republic of Texas,⁴¹⁵ and the fact that most lawyers knew only English,⁴¹⁶ this is not surprising. Because Spanish and Mexican law continued to apply in many cases, however, the courts had to refer to Spanish-language laws, or to English translations of those laws. Chief Justice Hemphill felt no obligation to translate the Spanish law he cited in *Mills v. Waller*,⁴¹⁷ although

408. ORDEN GENERAL [GENERAL ORDER] (Aug. 22, 1838), *microformed on* Texas as Province & Republic, *supra* note 123, Item 247.1 (regarding hunger among American and Mexican families at Nacogdoches).

409. PROCLAMATION (Aug. 8, 1838), *microformed on* Texas as Province & Republic, *supra* note 123, Item 291.1 (citing a statement by President Sam Houston in English and Spanish regarding the rebellion by Tejanos at Nacogdoches).

410. See AL JUEZ SUPERIOR DEL CANTÓN DE SAN PATRICIO [TO THE SUPERIOR JUDGE OF SAN PATRICIO COUNTY] (June 13, 1838), *microformed on* Texas as Province & Republic, *supra* note 123, Item 293.

411. See Texas as Province & Republic, *supra* note 123, Items 293A-C.

412. PROCLAMATION (Feb. 21, 1839), *microformed on* Texas as Province & Republic, *supra* note 123, Item 363 (citing President Mirabeau B. Lamar opening trade with Mexican citizens on the Río Grande). One hundred fifty copies were made in English and 150 copies in Spanish. See STREETER, *supra* note 230, at 125.

413. See STREETER, *supra* note 230, at 201 (noting printer's bill for 200 proclamations in Spanish, but stating that no copy of proclamation has been discovered to date).

414. See Act approved Jan. 14, 1843, 7th Cong., R.S., § 3, 1843 Repub. Tex. Laws 22, reprinted in 2 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 842 (Austin, Gammel Book Co. 1898). For an example of the appointment of such interpreters prior to the enactment of this statute, see Letter from Sam Houston to Luís Sánchez (July 6, 1842), in JOURNALS OF CALLED SESSION, 1842, *supra* note 384, at 135-36.

415. See *supra* note 358.

416. See *supra* text accompanying note 287.

417. Dallam 416, 418 (Tex. 1841).

in *Garrett v. Nash*,⁴¹⁸ he quoted Spanish law extensively and then provided translations.

5. A New Language in Texas: the German Immigrants

A few German immigrants began to arrive in Texas during the Republic of Texas period. In 1841, a bill incorporating the German Union was approved.⁴¹⁹

B. *The Lack of Language Requirements for Citizenship in the Republic of Texas*

Like other aliens, the German immigrants were precluded from being appointed to office.⁴²⁰ However, citizenship was freely extended by the Republic of Texas to all white persons. No language requirement was imposed for citizenship. Anyone except slaves and Indians who resided in Texas on the date of the adoption of the Texas Declaration of Independence was granted citizenship by the Constitution, regardless of the length of residence in Texas.⁴²¹ For those arriving after the Texas Declaration of Independence, becoming a citizen of the Republic of Texas was a simple procedure, so long as the immigrant was white:

All free white persons who shall emigrate to this republic, and who shall, after a residence of six months, make oath before some competent authority, that he intends to reside permanently in the same, and shall swear to support this constitution, and that he will bear true allegiance to the Republic of Texas, shall be entitled to all the privileges of citizenship.⁴²²

418. Dallam 498, 499, 501 (Tex. 1843).

419. Act approved Jan. 4, 1841, 5th Cong., R.S., 1841 Repub. Tex. Laws 89, reprinted in 2 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 553 (Austin, Gammel Book Co. 1898).

420. See Act approved Dec. 14, 1837, 2d Cong., R.S., 1837 Repub. Tex. Laws 61, reprinted in 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 1403 (Austin, Gammel Book Co. 1898).

421. REPUB. TEX. CONST. of 1836, General Provisions § 10, reprinted in 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 1069 (Austin, Gammel Book Co. 1898). See also *id.* at art. I, § 7 (providing that senators "shall be chosen by districts, as nearly equal in free population (free negroes and Indians excepted), as practicable").

422. *Id.* at General Provisions § 6. These liberal citizenship provisions are consistent with those extended to the Anglo-American immigrants by Mexico. Foreigners who "exercise any useful profession or industry, by which, at the end of three years, they have a capital to support themselves with decency, and are married" were naturalized under Mexican law. They were then eligible to obtain letters of citizenship. See Colonization Law of 1823, Mexico, arts. 27 & 28 (1823), reprinted in 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 30 (Austin, Gammel Book Co. 1898). In 1828, naturalization was extended to all foreigners one year after they established themselves upon colonizable lands. See *id.*

Once a citizen, the immigrant was eligible to vote if he was 21 years or older and had resided in the district or county where the election was held for six months.⁴²³ Any immigrant who had lived in the Republic of Texas for at least three years preceding the election was eligible for the office of President of the Republic of Texas.⁴²⁴ The framers of the Republic of Texas, as immigrants themselves, provided for very liberal provisions that ensured the active participation of future immigrants in a very short period of time after their arrival in the Republic, regardless of their ability to speak English.

C. *Plans for Bilingual Government by the Santa Fé Expedition*

Additional evidence that the Republic of Texas continued to believe in the right to communicate with the government in one's own language is found in the plans developed for the Santa Fé expedition. This expedition was an ill-fated attempt by the Republic of Texas to assert jurisdiction over the Spanish-speaking population of the Mexican state of Nuevo México (today New Mexico) east of the Río Grande.⁴²⁵ The Republic of

Naturalization Law of the General Congress, Mexico, art. 14 (1828). Other foreigners had to reside in Mexico for 2 years. *See id.* art. 1. Coahuila & Texas had previously extended even more generous benefits, providing for naturalization for foreigners as soon as they "have obtained lands, and established themselves in these settlements." Decree no. 16, art. 31 (1825) (State of Coahuila and Texas). The state legislature in 1827 established a procedure permitting the Governor to issue letters of citizenship. *See* Decree no. 12 (1827) (State of Coahuila and Texas). In 1835, foreigners who had not obtained letters of citizenship were precluded from holding office or being admitted to popular meetings. *See* Decree no. 312, art. 2 (1835) (State of Coahuila and Texas). Article 4 of the statute provided that in the Texas Departments foreigners should receive the certificates of citizenship 'without difficulty,' but at the same time required that the executive guard against fraud. *See id.*

423. *See* REPUB. TEX. CONST. of 1836, art. VI, § 11, *reprinted in* 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822-1897*, at 1069 (Austin, Gammel Book Co. 1898).

424. *See id.* § 1.

425. The Republic of Texas claimed the boundaries of Texas extended to all of the lands north and east of the Río Grande. *See* Act approved Dec. 19, 1836, 1st Cong., R.S., 1836 Repub. Tex. Laws 133-34, *reprinted in* 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822-1897*, at 94 (Austin, Gammel Book Co. 1898); *see also* Letter from Secretary of State Abner S. Lipscomb to Commissioners of Santa Fé (Apr. 14, 1840), *in* REPORT OF THE SECRETARY OF STATE, 1841, *reprinted in* JOURNALS OF CALLED SESSION, 1842, *supra* note 384, at 287 (noting that the Republic of Texas claims the "ancient" boundary, "from the mouth of the Río del Norte to its source"). This claim had no basis in historical fact. *See* I HANDBOOK OF TEXAS, *supra* note 113, at 194 (noting that in 1721 the Medina River was considered the boundary between Texas and Coahuila); I. J. Cox, *The Southwest Boundary of Texas*, 6 Q. OF THE TEX. ST. HIST. ASS'N 81, 102 (1902) (concluding that the "[u]ndisputed documentary evidence of more than a century" reviewed in the Article shows Texas did not extend to the Río Grande). The land between the Nueces River and the Río Grande

Texas was well aware that the Nuevo Mexicanos did not speak English.⁴²⁶ As a result, the Republic prepared documents for the Nuevo Mexicanos in Spanish. The Texas Declaration of Independence was published in Spanish in 1841.⁴²⁷ Proclamations to the citizens of Santa Fé, Nuevo México were issued in Spanish, along with the Texas Constitution and a statute governing the property of the Catholic Church.⁴²⁸ The preparation of these documents inviting the Nuevo Mexicanos in Spanish to join Texas is consistent with the Texians' pre-Independence assertions that all persons have a fundamental right to communicate with the government in their own language.

The Republic sought to assure the Nuevo Mexicanos of their complete equality with the other citizens of the Republic. Acting Secretary of State Samuel A. Roberts instructed the Commissioners who were to attempt to assert jurisdiction over Santa Fé:

First. You will assure them of the protection of the Government in the enjoyment of life, liberty and property: . . . of the liberty of speech and press . . . and in short, of all the political privileges contained in the bill of rights and constitution . . . *you must keep constantly before their minds, the fact, that they are invited to share equally with us, all the political rights which we ourselves enjoy.* It is believed, in fact, that this is the hinge upon which the success of [sic]

was part of the Spanish province of Nuevo Santander, and after independence from Spain became part of the Mexican state of Tamaulipas. See *infra* note 461.

426. See Letter from Acting Secretary of State Samuel A. Roberts to Santa Fé Commissioners (June 15, 1841), in REPORT OF THE SECRETARY OF STATE, 1841, reprinted in JOURNALS OF CALLED SESSION, 1842, *supra* note 384, at 289 (noting that Santa Fé "is inhabited by a people, strangers to our institutions and to our system of Government, speaking a different language, and deriving their origin from an alien source, whose religion, laws, manner and customs, all differ so widely from our own") (emphasis supplied). This description of the origin of Santa Fé as alien is ironic, since the origins of Nuevo México were very similar to those of Texas: both were part of the Spanish Empire, and subsequently were a part of Mexico. Roberts was a newcomer to Texas and had never lived in Texas when it was a part of Mexico, nor had he lived in areas of the state with large Tejano populations. See *supra* text accompanying notes 394 & 395.

427. DECLARATION OF INDEPENDENCE (1841), microformed on Texas as Province & Republic, *supra* note 123, Item 468. These Spanish copies were probably prepared for use in the Santa Fé Expedition. See STREETER, *supra* note 231, at 147.

428. See PROCLAMA DE SU EXCELLENCIA [sic] MIRABEAU B. LAMAR, A LOS CIUDADANOS DE SANTA FÉ (1841) [PROCLAMATION OF HIS EXCELLENCY MIRABEAU B. LAMAR TO THE CITIZENS OF SANTA FÉ], microformed on Texas as Province & Republic, *supra* note 124, Item 483; Letter from Joseph Waples to Secretary of State Samuel A. Roberts (Oct. 12, 1841), in REPORT OF SECRETARY OF STATE, 1841, reprinted in JOURNALS OF CALLED SESSION, 1842, *supra* note 384, at 275-77 (reporting that 500 copies of the Constitution in Spanish and of the President's address to the Citizens of Santa Fé were received at a cost of \$420).

your negotiations will turn. Let them be convinced that the equality which we promise, is not imaginary; let them feel and understand, that they are really to be freemen; that *they are to be citizens of a Republic, in whose government the voice of each one of them, will be as potent as that of the highest in our land*; that their representation in our legislature, will be in proportion to their numbers, which will ensure to them, an equal participation in the making of laws for the future, and of repealing such as are now in force, and which may be obnoxious.⁴²⁹

If the Texians had the political right to communicate with the government in a "known tongue," then the Nuevo Mexicanos had to be provided this right as well. This right was explicitly acknowledged in the plans for the government of Santa Fé to be established after the Commissioners extended the jurisdiction of the Republic. Those plans explicitly limited the operation of the local government to the (Spanish-speaking) citizens of Santa Fé:

[Y]ou will . . . appoint such persons to conduct the public business . . . In making these appointments, the President instructs me to say, that you will restrict yourselves to the citizens of Santa Fé . . .

[Y]ou may recommend, and even urge them to select from their own citizens, delegates, not to exceed three in number, to be sent to our seat of government, during the session of the next Congress, who may from their own personal observation, examine into the operations of our system of government, and report to their constituents on their return. Although these delegates will not be entitled to a vote on the floor of Congress, they will undoubtedly be permitted to occupy seats on it, and to speak on any subject that may concern them.

. . . .

[P]olicy undoubted requires that they should be assured, there will be no attempt on our part to change or modify their municipal law, without first obtaining their express consent.⁴³⁰

The delegates who were proposed to be sent to the Congress no doubt would have been provided interpreters, like those provided to the Tejano representatives.

Since all of the municipal law in Santa Fé was in Spanish, and all of the officials spoke Spanish, this plan clearly envisioned the continued opera-

429. Letter from Acting Secretary of State Samuel A. Roberts to Commissioners of Santa Fé (June 15, 1841), in *REPORT OF THE SECRETARY OF STATE, 1841, reprinted in JOURNALS OF CALLED SESSION, 1842*, *supra* note 384, at 290-91 (emphasis added).

430. *Id.* at 291-92.

tion of local government in Spanish. This plan is verified in the amplified instructions provided to Colonel William G. Cooke, who was to remain in Santa Fé to implement the jurisdiction of the Republic of Texas:

First. You will not be permitted, either directly or indirectly, to make any alterations whatever, (except such as are hereinafter particularly mentioned) in any of the laws of that country, nor in the mode of their administration.

Second. The tribunals, as now constituted, will remain inviolate, save only the removal of such functionaries as hold their offices directly from the Supreme Government of Mexico, and in whose appointments the people of Santa Fé have had no voice; even these, you will in all cases retain, unless their removal is formally demanded by a written petition from the people.

....

The foregoing instructions, as well as the instructions to the Joint Commissioners, are all grounded upon the broad principle, that not a single alteration or innovation, should be made in the laws, usages, or customs of the people of that country, which the change in their government does not render absolutely necessary . . . In short, no alteration whatever will be made, either in the municipal law, the modes of procedure in their courts, or in conducting their public affairs, which do not, of necessity, follow from the new position in which they will be placed, by the change in their Government.⁴³¹

D. *Bilingual Local Government*

While the Republic of Texas never exercised jurisdiction over Nuevo México, the population in some areas of the new nation were predominantly Tejano. In addition to providing these Tejanos with access to the national government in Spanish, the Republic of Texas permitted those areas of the new nation with large Tejano populations to conduct local government in Spanish.

1. San Antonio

The population of San Antonio remained largely Tejano through most of the Republic of Texas period.⁴³² As in other areas of the Republic

431. Letter from Acting Secretary of State Samuel A. Roberts to Colonel William G. Cooke (June 15, 1841), in *REPORT OF THE SECRETARY OF STATE, 1841, reprinted in JOURNALS OF CALLED SESSION, 1842, supra* note 384, at 295-96.

432. See RAY F. BROUSSARD, *SAN ANTONIO DURING THE TEXAS REPUBLIC: A CITY IN TRANSITION* at 16 (1967) (noting Mary Maverick's report in 1838 that the Mavericks and two Irish families were the only English-speakers in the city); *id.* at 14 (stating that John W. Smith was elected mayor in 1837, but that all 8 city council members were Tejanos); Au-

with large Tejano populations, Spanish continued to be the language of daily interchange. When the defenders of the Alamo were buried in San Antonio in 1837, addresses were made in Spanish and English.⁴³³ An 1838 invitation to a banquet and ball to celebrate the battle of San Jacinto was sent in Spanish.⁴³⁴

The first records of the City of San Antonio in the Republic of Texas period are entirely in Spanish.⁴³⁵ Statutes of the Republic of Texas were translated into Spanish,⁴³⁶ and elections were conducted entirely in Spanish.⁴³⁷

Just as the Mexican government had previously provided for a bilingual secretary of the ayuntamiento in the Anglo-American settlements, the Republic of Texas now required the mayor and aldermen of the city of San Antonio to appoint "a clerk or secretary who shall possess a competent knowledge of the Castilian and English languages."⁴³⁸ The cities of Victoria and Gonzáles were subject to the same requirements.⁴³⁹ These

guste Fréteillère, *Adventures of a Castrovillian*, in JULIA NOTT WAUGH, CASTRO-VILLE & HENRY CASTRO, *EMPRESARIO* 91 (Julia Nott Waugh ed., 1934) ("The city of San Antonio [in 1844] had at that time about 1,000 inhabitants, nine-tenths of whom were Mexicans, and the Spanish language was generally spoken."); see also Broussard, *supra*, at 29 (stating that by 1846 the population was only half Tejano).

433. See Letter from Juan Seguín to General Albert Sidney Johnston (Mar. 13, 1837), in DE LA TEJA, *supra* note 331, at 161-62 (noting that Seguín made an address "in the Castilian [sic] language as I do not possess the English" and that Major Western addressed the group in English). Juan Seguín's comments in Spanish are reproduced in DE LA TEJA, *supra* note 331, at 156.

434. INVITATION (Apr. 21, 1838), *microformed on Texas as Province & Republic*, *supra* note 123, Item 228. One of the hosts was Erasmo Seguín, but the others were not Tejanos: "Coronel" [Colonel] W. H. Karnes, W. H. Daingerfield, and Joseph Baker.

435. See San Antonio, Tex., JOURNAL OF CITY COUNCIL A 1-11 [hereinafter SAN ANTONIO CITY COUNCIL JOURNAL A (containing the minutes in Spanish for the period from June, 1837 through February, 1838)]. The Work Projects Administration prepared an English translation of the Spanish language documents from the Republic of Texas period. See SPANISH MINUTE BOOK ONE, SPANISH MINUTE BOOK TWO, & JOURNAL A, (WORKS PROJECT ADMINISTRATION, TRANS., n.d.) (copy available at City Clerk's Office in San Antonio City Hall).

436. See SAN ANTONIO CITY COUNCIL JOURNAL A, *supra* note 435, at 2-3 (citing the minutes of June 5, 1837 containing a translation of the statute incorporating the city).

437. See *id.* at 3-4 (containing election documents for election of Sept. 1837).

438. Act approved Dec. 14, 1837, 2d Cong., R.S., § 3, 1837 Repub. Tex. Laws 37, reprinted in 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 1379 (Austin, Gammel Book Co. 1898).

439. See *id.* §§ 10 & 11. The Congress of the Republic of Texas repealed the requirement for a bilingual secretary in Gonzáles in May, 1838. See Act approved May 3, 1838, 2d Cong. R.S., §1, 183 Repub. Tex. Laws 3, 4, reprinted in 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 1473-74 (Austin, Gammel Book Co. 1898). After Tejanos were expelled from Victoria, the Congress of the Republic of Texas passed a new act incorporating Victoria which did not require a bilingual city secretary. See Act approved Feb. 5, 1840,

requirements were extended to the towns of San Patricio, Franklin, and Refugio in May 1838.⁴⁴⁰ As the Tejano population of these cities declined, either through forced expulsions or because refugees fled continued battles between the Republic of Texas and Mexico,⁴⁴¹ the requirement for bilingual secretaries was removed.⁴⁴²

On March 1, 1838, the Tejanos of San Antonio began to maintain bilingual city records. Imitating the practice of the Anglo-American immigrants during the Mexican period,⁴⁴³ they kept English language records on the left hand page and Spanish-language records on the right-hand page.⁴⁴⁴ This bilingual practice continued until October 1840, when records again were maintained only in Spanish.⁴⁴⁵ Bilingualism resumed in January 1841.⁴⁴⁶ At the end of that year, however, minutes were maintained only in Spanish.⁴⁴⁷ Bilingual records resumed in April, 1842 and continued until August of that year.⁴⁴⁸ The government officials also affected which language was to be utilized. Juan Seguín served as Mayor of

4th Cong., R.S., 1840 Repub. Tex. Laws 276-79, *reprinted in* 2 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822-1897*, at 450-53 (Austin, Gammel Book Co. 1898).

440. See Act approved May 24, 1838, 2d Cong., R.S., §§ 6-7, 1838 Repub. Tex. Laws 29-30, *reprinted in* 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822-1897*, at 1499-1500 (Austin, Gammel Book Co. 1898).

441. See BROUSSARD, *supra* note 432, at 29 (describing the exodus of Tejanos from San Antonio when Seguín, their last protector, fled the city; by 1846, the population had declined to 750, half Tejano and half Anglo, from a population of 1,500 Tejanos and 250 Anglos in 1839); MONTEJANO, *supra* note 254, at 27 (describing exodus of 200 Tejano families from San Antonio by the 1840's); *id.* at 28-29 (noting force, fraud and apprehension were causes of Tejano exodus and describing the failure of a plan to drive Tejanos out because of the refusal of Germans to participate); *infra* part VI.F (describing expulsions and mistreatment of Tejanos).

442. See Act approved Jan. 14, 1842, 6th Cong., R.S., 1842 Repub. Tex. Laws 32-35 (repealing previous incorporation act requiring a bilingual secretary), *reprinted in* 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822-1897*, at 704-07 (Austin, Gammel Book Co. 1898). As the Tejano population of San Antonio declined, Anglos gained control of the City Council. MONTEJANO, *supra* note 254, at 40 (noting that Tejanos were 57 of the 88 aldermen in San Antonio between 1837 and 1847, but only 17 of 99 aldermen between 1847 and 1857).

443. See *supra* text accompanying note 159.

444. See SAN ANTONIO CITY COUNCIL JOURNAL A, *supra* note 435, at 12 (containing election results of Mar. 1, 1838 in English).

445. See *id.* at 53-54 (containing minutes of Oct. 29, 1840 and Nov. 4, 1840 in Spanish).

446. See *id.* at 57 (containing minutes of Jan. 9, 1841 in English).

447. See *id.* at 74-76 (containing records in Spanish from Nov. 15, 1841 to Feb. 1, 1842).

448. See *id.* at 79-92 (containing bilingual records from Apr. 18, 1842 to Aug. 23, 1842).

San Antonio in 1841 and 1842.⁴⁴⁹ Since Seguín did not speak English,⁴⁵⁰ he communicated with other governmental officials in Spanish.⁴⁵¹

After August 1842, there is a nineteen-month gap in the records; during this period San Antonio was in turmoil as the military forces of the Republic of Texas and of Mexico advanced and retreated.⁴⁵² When municipal government resumed operation in March 1844, the minutes explain the lack of records as due to the "disorganized state of this County."⁴⁵³ The decline in the Tejano population during this period⁴⁵⁴ had an immediate effect on the maintenance of municipal records: after March 30, 1844, all the records are maintained only in English.⁴⁵⁵

The maintenance of records only in English does not mean that governmental services were provided only in that language. As San Antonio experienced an influx of immigrants speaking other languages, the city responded by addressing the needs of those immigrants. German and French immigrants, for example were found to be regularly violating regulations for the use of irrigation water. The City Council in July 1844 ordered the irrigation regulations to be translated into French and German, and posted in public places.⁴⁵⁶

2. Laredo

The Republic of Texas claimed the border of Texas extended to the Río Grande.⁴⁵⁷ The lands of the Río Grande had never been a part of Texas prior to 1836. Santa Fé had been a part of Nuevo México, while the land between the Nueces River and the Río Grande had been part of the

449. See II HANDBOOK OF TEXAS, *supra* note 114, at 590.

450. See *supra* text accompanying note 368.

451. See Letter from Juan Seguín to Mirabeau B. Lamar (Nov. 1839), in DE LA TEJA, *supra* note 331, at 173-174 (requesting special election after resignation of José Antonio Navarro from Congress); Letter from Juan Seguín to Bexar County Judge (Apr. 18, 1842), in DE LA TEJA, *supra* note 331, at 179 (resigning as president of corporation of City of San Antonio).

452. See II HANDBOOK OF TEXAS, *supra* note 114, at 185.

453. SAN ANTONIO CITY COUNCIL JOURNAL A, *supra* note 435, at 93 (Mar. 30, 1844).

454. See *supra* note 432.

455. Spanish-language records are found at the end of the journal. These are copies of affidavits prepared in Nov. 1841 regarding land titles. See SAN ANTONIO CITY COUNCIL JOURNAL A, *supra* note 435, at 154-57, 178.

456. See SAN ANTONIO, TEX., Ordinance of June 22, 1844, in SAN ANTONIO CITY COUNCIL JOURNAL A, *supra* note 435, at 105 (ordering "that the 5th Section of the Law respecting the Rights of the Water, be published in the French and German Languages and that after such publication the said Law shall be rigidly enforced"); see also BROUSSARD, *supra* note 432, at 33.

457. See *supra* note 426.

Spanish province of Nuevo Santander, and later the Mexican state of Tamaulipas.⁴⁵⁸ Laredo in 1836 considered itself a part of Tamaulipas.

Although the Republic of Texas never exercised jurisdiction over Laredo, Texas law uses a narrative of Texas history that assumes that the lands of the Rio Grande were a part of the Republic. In determining land titles in South Texas, for example, the Texas courts use the fiction that the laws of the Republic of Texas controlled property, and that Mexico did not control this land.⁴⁵⁹ If the Texas courts use the fiction that Texas law controls land titles in South Texas after December 19, 1836, then this narrative of Texas law must also apply to the continued use of Spanish in the municipal government of Laredo from 1836 until the arrival of the United States Army in November 1846. If the Texan claim to Laredo is to be taken seriously, as post-1845 events require, the continued use of Spanish in local government in Laredo during the Republic of Texas period is

458. See *supra* note 426 (describing lack of historical evidence for boundary claims of the Republic of Texas); MONTEJANO, *supra* note 254, at 30 (noting that the Nueces River was the boundary between the Mexican states of Texas and Tamaulipas). Even the Texas Supreme Court, more than thirty years later, conceded that Texas exercised "no permanent jurisdiction" over the area

except along and near the Nueces river, including Corpus Christi, on the gulf; and the State of Tamaulipas exercised jurisdiction on and near the Rio Grande, on the eastern side of it, until after the annexation of Texas to the U.S., (on the 29th of Dec., 1845,) shortly after which, armed occupation of the disputed territory was taken by the United States, on behalf of Texas, since which time Texas has exercised jurisdiction.

State v. Rodríguez Sais, 47 Tex. 307, 309-10 (Tex. 1877). (This case is incorrectly cited as "State v. Sais," reflecting the common failure of legal publishers to understand the Hispanic practice of using both parents' last names. See Yvonne Cherena Pacheco, *Latino Surnames: Formal & Informal Forces in the United States Affecting the Retention and Use of the Maternal Surname*, 18 T. MARSHALL L. REV. 1 (1992)). See also State v. Gallardo, 106 Tex. 274, 166 S.W. 369, 370-71 (1914) (conceding South Texas remained under the jurisdiction of the Mexican state of Tamaulipas until after annexation by the United States).

459. See State v. Ballí, 144 Tex. 195, 190 S.W.2d 71, 87 (1944) (holding that "a title good against the Mexican government on Dec. 19, 1836, is good against the State of Texas"), *cert. denied*, 328 U.S. 852 (1946); State v. Gallardo, 106 Tex. 274, 166 S.W. 369, 370-71 (1914) (conceding Texas did not establish jurisdiction between the Nueces and Rio Grande Rivers until after annexation in 1845); *id.* at 373 (holding that claims under Spanish and Mexican land grants must be determined "by the character of the title under which they claim as it existed on Dec. 19, 1836") (emphasis added); Kenedy Pasture Co. v. State, 111 Tex. 200, 231 S.W. 683, 691 (1921) (noting that Texas courts have "never recognized the validity of any Mexican title to land in the territory originating after December 19, 1836," since "the sovereignty of Mexico over this territory after December 19, 1836 was never rightful, and Mexico accordingly had no power after that date to create titles to land within it."). But see Treviño v. Fernández, 13 Tex. 630, 666 (1855) (considering the effect of an 1844 Tamaulipas state court judgment regarding land in Cameron County because "the acts of the Government in actual possession, in the ordinary administration of its laws, so far as they affect private rights, are valid . . .").

further support for the assertion that multilingual government was envisioned by the framers of the Texas Constitution.⁴⁶⁰

The claim of the Republic of Texas to Laredo was clearly a "paper claim."⁴⁶¹ There are no documents in the Laredo Archives from officials of the Republic of Texas from 1836 to 1845.⁴⁶² In contrast, the municipal archives of this period are filled with reports to and from the state authorities of Tamaulipas. Documents were sent to and received from Mexican authorities in Mier, Ciudad Guerrero, Matamoros, and Mexico City.⁴⁶³ Taxes were collected under Mexican law, and elections were held under Mexican law.⁴⁶⁴ Census information in 1845 was sent to the Mexican government.⁴⁶⁵ Because Laredo continued to be governed by Mexico during the Republic of Texas period, government continued to be conducted solely in Spanish.⁴⁶⁶

460. See Cover, *supra* note 251, at 4 (noting that for "every constitution there is an epic.").

461. MONTEJANO, *supra* note 254, at 18 (describing the Republic of Texas' claim to the Río Grande as a "paper claim . . . for the republic had no control or influence beyond the Nueces," and noting that campaigns to assert the territorial claims "failed miserably"); *cf. id.* at 30 (describing the strip between the Nueces River and the Río Grande as a "no-man's land," claimed by the Republics of Texas and Mexico but actually controlled by Indian tribes").

462. Laredo Archives, *supra* note 106, Folders 120-79. The documents microformed on the Laredo Archives are organized in folders; each document in a folder is numbered. All references to documents in the Laredo Archives below use the numbering system set out in ROBERT D. WOOD, S.M., INDEXES TO THE LAREDO ARCHIVES (1993). The numbering of the folders on the microfilm occasionally differs from that in the *Indexes*; such differences in numbering are indicated in brackets ([]).

463. Examples in the Laredo Archives, *supra* note 106, include: Letter from Military Commander to Mayor (Sept. 22, 1837), Folder 129, Document 38; Letter from Military Commander to Mayor (Oct. 4, 1837), Folder 129, Document 40; Investigation by Mayor (Feb. 13, 1837), Folder 131, Document 1; Letter from Tax Administrator to Mayor (1838), Folder 137, Document 35; Letter from P. Martínez to Mayor (Feb. 25, 1841), Folder 144, Document 34; Letter from M. Lafuente to Mayor (Feb. 27, 1841), Folder 144, Document 39; Letter from M. Lafuente to Mayor (July 9, 1841), Folder 145, Document 28; Letter from Military Commander to Mayor (Feb. 16, 1843), Folder 162, Document 8; Letter from Military Commander to Mayor (Apr. 25, 1845), Folder 171, Document 15; Letter from Military Commander to Mayor (June 10, 1845), Folder 172, Document 15; Letter from Military Commander to Mayor (July 26, 1845), Folder 173, Document 156; Letter from P. Martínez to Mayor (Mar. 16, 1846), Folder 179, Document 2.

464. See Elecciones Primarias ó de Compromisarios-Ley de 27 de Abril de 1837 [Primary Elections or Elections of Arbitrators-Law of Apr. 17, 1837], *microformed on* Laredo Archives, *supra* note 106, Folder 234, Document 1.

465. See Año de 1845—Estado que manifiesta el número de Muertos: Nacidos y Casados en el segundo semestre del corriente año [Year of 1845-Census of Deaths, Births, and Marriages in the second six months of this year], *microformed on* Laredo Archives, *supra* note 106, Folder 228, Document 1.

466. See Laredo Archives, *supra* note 106, Folders 123-177 (containing documents from 1836 to 1845).

Three attempts were made by the Republic of Texas to assert control over Laredo; all were unsuccessful in bringing Laredo under the permanent control of the Republic. In March 1837, twenty-two filibusters, led by Erastus "Deaf" Smith, were rejected by Mexican forces.⁴⁶⁷ The Texas Rangers under Captain Jack Hays robbed horses at Laredo in January 1841, but did not assert control over the area.⁴⁶⁸ The Somervell Expedition was organized to avenge the capture of San Antonio by General Woll in September 1842. Laredo was captured on December 8, 1842, and sacked by the Southwestern Army of Operations.⁴⁶⁹ The Army quickly left,⁴⁷⁰ and Mexico resumed jurisdiction over Laredo. Texas would not control Laredo until the arrival of the U.S. Army in November 1846.⁴⁷¹

E. *Language and the Schools*

Apparently eager to promote the learning of English among Tejanos, the act incorporating the city of San Antonio required the council "to promote by every equitable means, the establishment of a common schools [sic] . . . in which the English language shall be taught, and the children of the poor class of citizens invited and received gratis."⁴⁷² These provisions were also extended to other cities with large Tejano populations.⁴⁷³

In 1840, the Republic of Texas enacted legislation to establish Common Schools. The legislation established commissioners of these common schools who were required to inspect the qualifications of teacher applicants. Teachers had to be able to teach "reading, writing, *English grammar*, arithmetic and geography."⁴⁷⁴ Like the Mexican laws that required

467. See JERRY THOMPSON, *SABERS ON THE RIO GRANDE* 76-77 (1974).

468. See *id.* at 98. Hays returned the horses the following day, claiming the horses had been stolen to let Laredoans know that the Texas Rangers would retaliate for any crimes committed against Texans. See *id.* at 98-99.

469. See STREETER, *supra* note 230, at 162; THOMPSON, *supra* note 468, at 117-27.

470. By December 21, 1842, the Army had extorted money from Guerrero, Mexico and was camped near Mier, Mexico. See J.B. WILKINSON, *LAREDO & THE RIO GRANDE FRONTIER* 178-79 (1975).

471. See Thompson, *supra* note 467, at 145-46.

472. Act approved Dec. 14, 1837, 2d Cong., R.S., § 10, 1837 Repub. Tex. Laws 37, 39, reprinted in 1 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822-1897*, at 1379, 1381 (Austin, Gammel Book Co. 1898).

473. See *supra* text accompanying notes 439-40 (describing the application of the requirements of the act incorporating the city of San Antonio to Victoria, González, San Patricio, Franklin, and Refugio).

474. Act approved Feb. 5, 1840, 4th Cong., R.S. §§ 6-7, 1840 Repub. Tex. Laws 146, 148 (emphasis added), reprinted in 2 H.P.N. GAMMEL, *THE LAWS OF TEXAS 1822-1897*, at 320, 322 (Austin, Gammel Book Co. 1898).

that Castilian be taught, but did not prohibit instruction in English,⁴⁷⁵ this statute did not prohibit instruction in other languages.

F. *The Limitations of Historical Argument: Racism and the Framers During the Republic of Texas Period*

While the Texian framers provided the Tejanos with access to government in Spanish, Tejanos were not treated equally by all Texians. During the Republic of Texas period, "a spirit of revenge and abandon prevailed in the young republic, and many [Anglo] ex-soldiers carried out raids that claimed the land, stock, and lives of Mexicans, ally and foe alike."⁴⁷⁶ Tejanos were expelled from Victoria, San Patricio, Goliad (La Bahía), Refugio, and Nacogdoches.⁴⁷⁷ Tejanos "suffered from forced marches, general dispossession, and random violence" at the hands of Texians.⁴⁷⁸ Tejanos who had fought in the war for independence were denied the vote in several counties.⁴⁷⁹ Juan Seguín described graphically in his memoirs the problems faced by Tejanos who suddenly found themselves to be foreigners in their own land:

Many a noble heart grasped the sword in the defense of the liberty of Texas, cheerfully pouring out their blood for our cause, and to them everlasting public gratitude is due. But there were also many bad men, fugitives from their country who found in this land an opportunity for their criminal designs.

San Antonio claimed then, as it claims now, to be the first city of Texas. It was also the receptacle of the scum of society. My political and social situation brought me into continual contact with that class of people. At every hour of the day and night my countrymen ran to me for protection against the assaults for exactions of those adventurers. Sometimes by persuasion, I prevailed on them to desist; sometimes, also, force had to be resorted to. How could I have done

475. See *supra* part IV.E.

476. MONTEJANO, *supra* note 254, at 26-27.

477. See DE LEÓN, *supra* note 36, at 77-78 (describing expulsions of Tejanos from Victoria, Goliad, and Nacogdoches); MONTEJANO, *supra* note 254, at 26-27; see also Act approved Jan. 26, 1839, 3d Cong., R.S., 1839 Repub. Tex. Laws 146-48 (confiscating the property of Tejanos who rebelled at Nacogdoches in Aug. 1838), reprinted in 2 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 146-48 (Austin, Gammel Book Co. 1898). Since the titles of these individuals, descendants of the founders of Nacogdoches, were in Spanish, § 13 of the act required the land commissioner to translate the titles to determine what lands were confiscated.

478. MONTEJANO, *supra* note 254, at 27.

479. MONTEJANO, *supra* note 254, at 39 (quoting Corpus Christi merchant Henry Kinney), quoted in LOWRIE, *supra* note 126, at 175 (noting that "Mexicans in Texas were undoubtedly abused and mistreated").

otherwise? Were not the victims my own countrymen, friends, and associates? Could I leave them defenseless, exposed to the assaults of foreigners who, on the pretext that they were Mexicans, treated them worse than brutes? Sound reason and the dictates of humanity precluded any different conduct on my part.⁴⁸⁰

The Republic of Texas offered even less protection to African Texans. Slavery was fully protected by the Constitution.⁴⁸¹ Jailed slaves were subject to sale as runaway slaves if not claimed by their owner.⁴⁸² Texans were prohibited from emancipating their slaves unless the freed slave was removed outside of Texas.⁴⁸³ All "free persons of color" were expelled.⁴⁸⁴ Free persons of African descent were prohibited from emigrating and residing in the Republic, unless given special permission by Congress. Marriage between European descendants and African descendants was prohibited and deemed a high misdemeanor.⁴⁸⁵ Slave-running was, however, outlawed as piracy.⁴⁸⁶ This prohibition has been described as a concession to the anti-slavery sentiment of Tejanos.⁴⁸⁷

VII. CONCLUSION

Texas has changed dramatically since 1836 when Anglo-American immigrants asserted the right to communicate with government in a "known tongue." Notwithstanding all of the changes Texas has experienced since

480. DE LA TEJA, *supra* note 331, at 90.

481. See REPUB. TEX. OF 1836, General Provisions § 9, *reprinted in* 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 1069 (Austin, Gammel Book Co. 1898).

482. See Act approved Feb. 5, 1841, 5th Cong., R.S., 1841 Repub. Tex. Laws 185-86, *reprinted in* 2 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 185-86 (Austin, Gammel Book Co. 1898).

483. See REPUB. TEX. OF 1836, General Provisions § 9, *reprinted in* 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 1069 (Austin, Gammel Book Co. 1898). The draft of the Constitution of the Republic of Texas had an entire section devoted to slaves. The provisions described here were in § 1 of the Slave provisions. See JOURNALS OF THE CONVENTION OF THE FREE, SOVEREIGN AND INDEPENDENT PEOPLE OF TEXAS, IN GENERAL CONVENTION ASSEMBLED (Mar. 9, 1836), *reprinted in* 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 872 (Austin, Gammel Book Co. 1898).

484. See Act approved Feb. 5, 1840, 4th Cong., R.S., 1840 Repub. Tex. Laws 151-53, *reprinted in* 2 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 879 (Austin, Gammel Book Co. 1898). President Sam Houston delayed the implementation of this statute for two years. See PROCLAMATION BY THE PRESIDENT OF THE REPUBLIC OF TEXAS (Dec. 21, 1842), *reprinted in* 2 H.P.N. GAMMEL, LAWS OF TEXAS 879 (1898).

485. See Act approved June 5, 1837, 1st Cong., R.S. § 9, 1837 Repub. of Tex. Laws 233, 234-35, *reprinted in* 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 1293-95 (Austin, Gammel Book Co. 1898).

486. See REPUB. TEX. CONST. OF 1836, General Provisions § 9, *reprinted in* 1 H.P.N. GAMMEL, THE LAWS OF TEXAS 1822-1897, at 1069 (Austin, Gammel Book Co. 1898).

487. See HARRINGTON, TEXAS BILL OF RIGHTS, *supra* note 45, at 17.

1836, no changes have occurred that suggest that the original intent of these framers should be ignored.⁴⁸⁸ Statutes requiring or permitting multilingual government services today are in the best Texas tradition. These services are essential to provide native-born Texans and immigrants who do not speak English the access to government services in a "known tongue" that Texians asserted as a fundamental right almost 160 years ago. They ensure respect and trust for government among all citizens.⁴⁸⁹

The bilingualism of Tejanos and non-Tejanos in South Texas and West Texas (and increasingly in the rest of the state) is quintessentially Texan,⁴⁹⁰ however "alien" it may seem to those who staff organizations such as English First and U.S. English in the suburbs of Washington, D.C. Many Texans, like other Americans, however, are monolingual.⁴⁹¹ While

488. See BOBBITT, *CONSTITUTIONAL INTERPRETATION*, *supra* note 62 at 92-93 (discussing as a "standard part of the middle game of historical approaches" the need to examine to what extent changed circumstances may require outcomes that were not originally contemplated). See also *Davenport v. García*, 834 S.W.2d 4, 19 (Tex. 1992) (noting that constitutional guarantees are not "frozen in the past," but must evolve over time); *Damon v. Cornett*, 781 S.W.2d 597, 599 (Tex. 1989) (affirming that the Texas Constitution is an organic document that evolves through time); *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391, 394 (Tex. 1989) (stating that the Texas Constitution "was ratified to function as an organic document to govern society and institutions as they evolve through time."); *Dix*, *supra* note 23, at 1403 (noting the need to consider "how the framers wanted future decision makers to construe particular provisions."). But see *Jones v. Ross*, 141 Tex. 415, 173 S.W.2d 1022, 1024 (Tex. 1943) (stating that "settled law" is that "the provisions of our State Constitution mean what they meant when they were promulgated and adopted, and their meaning is not different at any subsequent time."); *Cramer v. Sheppard*, 140 Tex. 271, 167 S.W.2d 147, 154 (Tex. 1942) (stating that the "meaning of a constitutional provision is fixed when it is adopted, and it is not different at any subsequent time."); *Travelers' Ins. Co. v. Marshall*, 124 Tex. 45, 53, 76 S.W.2d 1007, 1011 (Tex. 1934) (stating that the meaning of a constitutional provision is fixed at its adoption; "its intent does not change with time or conditions; while it operates upon new subjects and changed conditions, it operates with the same meaning and intent which it had when formulated and adopted."); *Cox v. Robison*, 105 Tex. 426, 150 S.W. 1149, 1151 (Tex. 1912).

489. See Hall, *supra* note 272, at 1433 (noting that "[c]itizens will not respect a government they cannot trust. And they will not trust a government with which they cannot communicate.").

490. See, e.g., *City of Laredo v. Martínez*, 682 S.W.2d 954 (Tex. App.-San Antonio 1984, no writ) (upholding the suspension of a police officer for statements made by the officer in English and Spanish). The use of Spanish in Texas is also reinforced by the fact that we are neighbors with Mexico and by the continuing entry of immigrants from Mexico and, to a lesser extent, other Spanish-speaking countries.

Professor Scott Baird, a linguist at Trinity University, concludes that by the third generation Hispanics are fluent in English, "but the difference is that they have no need to lose Spanish." David D. Medina, *English-Only Movement Will Fail, Says Linguist*, Hous. Post, Dec. 31, 1989, at A28.

491. An oft-repeated joke makes this point:

the number of children enrolling in "foreign language" courses has risen in recent years,⁴⁹² and the Texas Legislature has encouraged the learning of other languages,⁴⁹³ Texas, like the rest of the United States, still has a long way to go. If the dream of economic growth brought by NAFTA is to be realized, Texas must do more to encourage multilingualism. The tragic loss of multilingual skills among children who enter the public schools speaking one language (such as Spanish, Chinese, or Vietnamese) and leave the school system still speaking only one language (English) must end. Multilingualism in the school system for monolingual English-speaking children must be encouraged.⁴⁹⁴

The fears of English-Only proponents threaten the development of multilingual skills among Texans. These English-Only proponents fear what the future holds if government continues to provide multilingual governmental services. They fear that English is an endangered language, even though millions around the world study English because of its dominant position in the commercial world.⁴⁹⁵ They fear that Hispan-

Q: What do you call someone who speaks two languages?

A: Bilingual.

Q: Three languages?

A: Trilingual.

Q: One language?

A: American.

Carlos Guerra, *Some Forget Bilinguals Also Speak English*, SAN ANTONIO EXPRESS-NEWS, July 16, 1994, at 1-C (describing the joke as one he has heard in four languages).

492. Lindsey Gruson, *U.S. Working to Close Foreign-Language Gap*, N.Y. TIMES, Dec. 2, 1986 (noting that Texas Education Department reported a 50% increase in foreign-language enrollment from 1981 to 1985).

493. TEX. EDUC. CODE ANN. § 61.782(e) (Vernon 1996) (establishing the Texas Academy of Foreign Languages and Culture to advance the study of foreign languages and cultures); TEX. EDUC. CODE ANN. § 147.003(b) (Vernon Supp. 1999) (establishing the Texas-Mexico Educational Development Program, and providing funding for institutions of higher education that demonstrate exceptional capability to attract funding for programs "enhancing foreign language proficiency . . . [and] understanding of cultural diversity"); TEX. EDUC. CODE ANN. § 148.002(b) (Vernon Supp. 1999) (establishing the Texas-International Educational Development Program for similar purposes).

494. See Jo Ann Zúñiga, *Study Picks Bilingual Education, Minority Business As Top Issues*, HOUS. CHRON., Apr. 21, 1994, at 30 (quoting Houston I.S.D. associate superintendent for community affairs Jaime de la Isla: "We are beginning an emphasis on dual-language-not only helping Spanish-speakers learn English, but for English speakers to learn Spanish, since we are a part of such an urban environment.").

495. See Diane Jennings, *Linguistic Debate Sets Tongues Afire; But Experts Say Spanish to Stay Secondary in U.S.*, DALLAS MORNING NEWS, Nov. 22, 1993, at A1 (noting that "experts say there is no threat that English will be eclipsed by Spanish or any other tongue."); see also ROBERT ET AL., *THE STORY OF ENGLISH* 19 (1986) (stating that English is used by 750 million to one billion people, of whom half speak it as a mother tongue, and asserting it "has become the language of the planet, the first truly global language").

ics do not want to learn English,⁴⁹⁶ although 74% of Hispanic immigrants speak English well or very well,⁴⁹⁷ more than 90% of all Hispanics believe all citizens and residents of the United States should learn English,⁴⁹⁸ and today's immigrants are learning English as fast or faster than past immigrants.⁴⁹⁹ They fear separatism, although the long history of multilingual governmental services in Texas has not led to separatism.⁵⁰⁰

496. See Carlos Guerra, *Some Forget Bilinguals Also Speak English*, SAN ANTONIO EXPRESS-NEWS, July 16, 1994, at C1 (reporting accusation by phone callers to newspaper columnist that "you Mexicans' don't speak English and don't want to learn it."); Mark Langford, *Democrats Reject Bid to Have English Declared Official Language*, UPI, Jan. 13, 1987, available in, LEXIS, News Library, UPSTAT File (quoting English-Only proponent Lou Zaeske as stating that "recent immigrants have not shown a desire to become a part of the mainstream culture" and "look upon America's English language as a secondary language."); *Mattox Says "English First" Letter Biased*, UPI, Dec. 2, 1986, available in LEXIS, News Library, UPSTAT File (quoting a letter from Rep. Jim Horn of Denton that asserts that "leaders of the 'bilingual movement' do not want immigrants to learn English . . .").

497. See Barringer, *supra* note 29 (reporting that Census Bureau finds 74% of Hispanics and 70% of Chinese and Korean immigrants also speak English well or very well).

498. See Juan R. Palomo, *Hispanic Survey Debunks Myths*, HOUS. POST, Dec. 17, 1992, at A41. As Professor Rodolfo de la Garza has noted, English-Only proponents who perpetuate this myth should be told "either you choose to be ignorant or you are now speaking as racists and as liars." *Id.* See also *Voices of America*, *supra* note 28 (quoting demographer Jeffrey Passel of the Urban Institute as finding "no evidence that recent immigrants from Latin American and Asia are less inclined to learn and use English than were earlier immigrants from Europe.").

499. See Jennings, *supra* note 495 (quoting UCLA political scientist Dr. Peter Skerry that today's immigrants are learning English "as fast or faster than previous generations.").

500. See Jennings, *supra* note 495 (reporting that studies show immigrants continue to learn English and that English "remains a common thread that binds America together."); *id.* (noting that 78% of Texas Spanish-speakers also speak English fluently); Juan R. Palomo, *Houston Station Shows the Future*, HOUS. POST, Oct. 21, 1990, at A26 (noting that English-Only proponents "fail to understand . . . that if a separatist movement was going to thrive here, it would have done so a long time ago."); see also William E. Clayton, Jr., *Survey Results Offer Surprises; Most Hispanics Say U.S. Getting Too Many Immigrants*, HOUS. CHRON., Dec. 16, 1992, at 1 (quoting Dr. Rodolfo de la Garza's interpretation of the Latino National Political Survey that "Most Hispanics see themselves first and foremost as Americans."); Rodolfo de la Garza, DALLAS MORNING NEWS, Jan. 10, 1993, at J1 (noting that Latino National Political Survey found Hispanics reject official English, but support speaking English); *id.* (reporting that 62.8% of United States-born Mexican Americans speak mostly or exclusively English in their homes).

Many fear new, largely Asian and Hispanic immigrants.⁵⁰¹ Some fear the political empowerment of the Hispanic community.⁵⁰²

These fears are unfounded.⁵⁰³ Texas has been accommodating and integrating language minorities for over 170 years—when English-speakers were the language minority struggling with the language of government at that time: Spanish.⁵⁰⁴

Consistent with their obligation to uphold the rights protected by the Texas Constitution, the legislative and executive branches should firmly reject attacks on multilingual governmental services.⁵⁰⁵ The courts should interpret the Texas Constitution in light of Texas history, and reject limits on access to governmental services for non-English-speaking Texas in a “known tongue.” The expressive function of the court would be served if the history set forth in this Article were used to recognize

501. Ken Flynn, *Founder of Hispanic Veterans Organization Decries “English Only,”* UPI, June 23, 1987, available in LEXIS, News Library, UPSTAT File (quoting American G.I. Forum founder Dr. Hector P. García as describing the English-Only movement as “nothing but racism, designed to make Hispanics look inferior for speaking Spanish.”); Seth Mydans, *Pressure for English-Only Job Rules Stirring a Sharp Debate Across U.S.*, N.Y. TIMES, Aug. 8, 1990, at 12 (quoting ACLU lawyer Ed Chen: “For a lot of folks, language becomes . . . a legitimate way of expressing concern about being overrun by hordes of Mexicans and Asians coming into the United States.”); Palomo, *supra* note 498 (quoting Prof. Tacho Mendiola that “the English-Only movement is just a cover for ‘let’s stop immigration at the border.’”).

502. See Bob Lowry, *“English First” Group Eyes 1989 Session*, UPI, Sept. 13, 1988, available in LEXIS, News Library, UPSTAT File (quoting Republican state senate nominee Matt Harnest as favoring official English because “it can break the political bondage that the minority political bosses have over the minorities that do not speak English.”).

503. English-Only proponents who assert that the banning of other languages is essential to maintain a unified society ignore the lessons of history: “Texans should be reminded that the English, using an effective educational system, successfully destroyed the Irish Celtic language, only to find that the resultant English-speaking Irish Catholics hated them even more than before and went on to pursue political separation.” Jordan, *A Century and a Half of Ethnic Change in Texas, 1836-1986*, *supra* note 27, at 417.

504. See Flynn, *supra* note 501 (noting that Alvaro Núñez Cabeza de Baca traveled across Texas in 1519, and quoting American G.I. Forum founder Dr. Hector P. García as quipping, “They certainly weren’t speaking English. We’ve been speaking Spanish in this state for a long, long time.”). Like other Chicanos throughout the Southwest, many Tejanos who speak Spanish “were never immigrants and are ‘as American as the heirs of the Mayflower.’” Helen Gaussoin, *New Mexicans Prefer Diversity to Official English*, UPI, Feb. 8, 1987, available in LEXIS, News Library, UPSTAT file (quoting New Mexico state representative Al Otero’s description of Nuevo Mexicanos after the New Mexico Legislature rejected a proposal to make English the official language).

505. See Linzer, *supra* note 44, at 1586 n.88 (stating that “[a]long with public concern, the best defense of liberty is for those in the nonjudicial branches to take their constitutional duties seriously and avoid constitutional intrusions before the courts become involved.”).

such a right.⁵⁰⁶ The use of historical argument in language claims under the Texas Constitution would itself have an expressive function:

Whenever a legitimate argument is advanced in an appropriate situation, the very fact of its avowal and assertion serves an expressive function. It says, "We are such people as would decide matters on this basis."

. . . .
[T]he simple assertion of an historical argument is also the expression of a continuity of tradition, a fidelity to our forefathers' legacy, an acknowledgment of the modesty of our perspective and the limits of our wisdom, a statement that constitutional institutions are faithful to the extent that they are constitutional.⁵⁰⁷

As one Texas Court of Appeals has noted: "Texans historically have chosen from olden times to assure all the liberties for which Texans historically struggled And the judiciary of Texas is the stronghold and defender of those State constitutionally guaranteed rights."⁵⁰⁸

Recognizing language rights under the Texas Constitution would serve an important expressive function to the modern-day descendants of the Tejanos of the nineteenth century. It would recognize that, notwithstanding the mistreatment which Tejanos often suffered in nineteenth century Texas, modern-day Texas is prepared to stand by the commitments made by the framers of the Texas Bill of Rights almost 160 years ago. To the extent this may require overruling of cases that did not effectuate the framers' intent, the Texas Supreme Court has noted that this is entirely appropriate whenever "'strong additional light [has] been thrown upon the subject' through historical research."⁵⁰⁹

Texans have a "just pride" in their "unique Texas heritage, . . . Texas Constitution, and . . . Texas jurisprudence."⁵¹⁰ While Texas as a state has

506. See BOBBITT, *CONSTITUTIONAL FATE*, *supra* note 15, at 211 (noting that the expressive function of a court "must sometimes be in advance of and even in contrast to, the largely inchoate notions of the people generally. The Court's role in the exercise of this function, after all, is to give concrete expression to the unarticulated values of a diverse nation"); *id.* at 219 (quoting Justice Hans Linde of the Oregon Supreme Court that expressive holdings "shape people's vision of their Constitution and of themselves.").

507. BOBBITT, *CONSTITUTIONAL FATE*, *supra* note 15, at 220, 223; *see also* Fallon, *supra* note 66, at 1256 (noting that whatever force historical argument has stems from the recognition that a living constitution "is the product of a tradition in which the present cannot be understood independently of the past.").

508. *Low v. King*, 867 S.W.2d 141, 145 (Tex. App.-Beaumont 1993, no writ) (Brookshire, J., concurring) (discussing free speech guarantee).

509. *Valmont Plantations v. State*, 355 S.W.2d 502, 503 (Tex. 1962) (quoting Justice Story's opinion in *Vidal v. Girard's Executors*, 2 How. 127, 11 L. Ed. 205 (1844)).

510. *Ex parte Tucci*, 859 S.W.2d 1, 15 (Tex. 1993).

not always lived up to the high standards set forth in the Texas Constitution, the state's "rich history demonstrates . . . a determination that state constitutional guarantees be given full meaning to protect [Texas] citizens."⁵¹¹ By providing today's Texans with the same language rights the Texans of the nineteenth century enjoyed, the Texas courts can provide leadership to other states with diverse populations that are struggling to accommodate the needs of their residents who do not speak English. Courts deciding language rights claims under the United States Constitution and under the constitutions of other states should consider the experience of the English-speaking Anglo-American immigrants in Mexican Texas.

For most of the nineteenth century, Texas excelled in meeting the language needs of its native Tejanos and of its European immigrants. This accomplishment was one of the reasons immigrants developed the kind of attachment to their new home that led one German immigrant to exclaim, "Alles fuer Texas und Texas ueber alles."⁵¹² With the resurrection of the language rights asserted by the framers of the Texas Bill of Rights, all can agree: ¡Qué viva Texas!

511. *Davenport v. García*, 834 S.W.2d 4, 19 (Tex. 1992).

512. Selma Raunick, *A Survey of German Literature in Texas*. 33 SW HIST. Q. 134, 140 (1930) (quoting Victor Bracht) ("All for Texas and Texas above all").

